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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,~~  
29 The CPOA shall function independently of, but shall remain accountable to]  
30 the City Administration[, or the] City Council[that, the City Attorney's Office,  
31 and APD.] [The CPOA] consists of a Police Oversight Board (the "POB") and  
32 an Administrative Office led by the CPOA Executive Director. In addition to  
33 any other duties, the Administrative Office, through the Executive Director and

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1 staff, shall investigate all civilian complaints relating to police conduct,  
2 monitor and report on police internal affairs matters, provide staffing to the  
3 POB, and manage the day to day operations of the CPOA. The POB shall  
4 provide policy guidance for, and civilian oversight of the Albuquerque Police  
5 Department and review and approve or amend the findings and conclusions of  
6 all investigations completed by the Administrative Office.

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

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

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

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

30 (4) Applicability of City Policies and Ordinances. The CPOA  
31 shall comply with all City ordinances and policies dealing with administrative  
32 functions including but not limited to those dealing with personnel, the merit  
33 system, and procurements.

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

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

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

18 (2) Promotion of Accountability and Impartiality. The  
19 CPOA shall promote a spirit of accountability and communication between the  
20 civilians and the Albuquerque Police Department while improving community  
21 relations and enhancing public confidence. The CPOA shall also promote a  
22 spirit of impartiality in its review of civilian police complaints, and shall ensure  
23 that officer conduct is reviewed on a case by case basis and judged fairly and  
24 objectively. Unless evidence establishes otherwise, the CPOA shall ensure  
25 that the public is aware that the facts of an individual case are not necessarily,  
26 on their own, reflective of the department as a whole.]

27 (3) Investigations. The Administrative Office shall  
28 independently investigate all civilian complaints; shall audit and monitor all  
29 incidences of use of force by police and all matters under investigation by  
30 APD's Internal Affairs (IA) or other APD personnel tasked with conducting  
31 administrative investigations related to a use of force incident; and shall  
32 prepare proposed findings and recommendations on all officer involved  
33 shootings and serious uses of force as defined by Article III, Paragraph 12,

1 Subsection (qq) [(or as subsequently amended)] of the court-approved DOJ  
2 Settlement Agreement with the City of Albuquerque ("Serious Uses of Force").

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

25 (b) APD shall provide POB members, the Director,  
26 and CPOA staff with reasonable access to APD premises, files, documents,  
27 reports[, data (including APD raw data).] and other materials that are  
28 reasonably necessary for the agency to perform thorough, independent  
29 investigations of civilian complaints and reviews of serious uses of force and  
30 officer-involved shootings. ~~[However~~ For purposes of this ordinance, "APD  
31 raw data" includes but is not limited to any facts and statistics or other data  
32 gathered, obtained, or that are otherwise within the possession of APD before  
33 being processed or analyzed. Notwithstanding the foregoing], any material

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1 protected from disclosure by law shall remain within the custody and control  
2 of APD at all times and will be handled in accordance with the applicable legal  
3 restrictions.

4 (c) All complaints filed by police officers will be  
5 investigated by Internal Affairs. Internal Affairs shall provide a weekly update  
6 to the Director on all open internal investigations. The Director's investigation  
7 report and findings shall indicate whether within the past year there were any  
8 IA investigations or supervisor generated complaints against the officer(s)  
9 involved in the incident being investigated or that are otherwise relevant to the  
10 subject matter of the investigation, the general nature of the prior  
11 investigations or complaints, and whether they resulted in any discipline.  
12 Redacted personnel records including those of the Internal Affairs Unit shall  
13 be made available to the POB on demand.

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

32 (e) Mediation First. Whenever possible, and as  
33 further described in § 9-4-1-6(C)(3) of this ordinance, mediation should be the

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1 first option for resolution of civilian police complaints.

2 (f) POB Audits; Access to Files. The POB may, by  
3 majority vote, perform an annual audit, or direct that an audit be performed, on  
4 a random sample of up to 10% of individual civilian police complaint  
5 investigations involving allegations of use of force, or in exceptional  
6 circumstances, for the purpose of promoting an enhanced measure of quality  
7 assurance in the most challenging cases the POB may, by a vote of two-thirds  
8 (2/3) of the members of the POB, perform an audit, or direct that an audit be  
9 performed, on any individual Citizen Police Complaint Investigation completed  
10 by the Administrative Office. For purposes of its audit function, the POB shall  
11 have full access to investigation files and may subpoena such documents and  
12 witnesses as relevant to its audit function.

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

26 (4) Reports to Mayor & Council. The CPOA shall submit a  
27 semi-annual written report to the Mayor and City Council according to § 9-4-1-  
28 10 herein. The CPOA Executive Director shall provide a quarterly oral report to  
29 the City Council at a regular or special meeting.

30 (5) CPOA Policy Recommendations. The CPOA shall  
31 engage in a long-term planning process through which it identifies major  
32 problems or trends, evaluates the efficacy of existing law enforcement  
33 practices in dealing with the same, [analyzes and evaluates data (including

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1 APD raw data), national trends, and police best practices, and establishes a  
2 program of resulting policy suggestions[, recommendations,] and studies  
3 each year. [For purposes of this ordinance “police best practices” refers to  
4 law enforcement methods or techniques based upon the experiences and  
5 outcomes in other police departments or law enforcement agencies that have  
6 documented superior results compared to other practices.] The CPOA's policy  
7 recommendation process shall be as follows:

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

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

21 (c) The Chief of Police [or designee] shall respond [~~in~~  
22 ~~writing within 45 days to any such policy recommendations by the CPOA, in~~  
23 ~~writing within 45 days to any such policy recommendations by the CPOA, and~~  
24 to policy recommendations made by the CPOA pursuant to paragraphs ‘a’ or  
25 ‘b’ above in writing within 45 days of final action on a policy by APD. As part  
26 this response, APD shall] indicate whether [~~they~~ the POB’s policy  
27 recommendation] will be followed through standard operating procedures or  
28 should be adopted as policy by the City Council, or [specifically] explain any  
29 reasons why such policy recommendations will not be followed or [~~should~~  
30 were] not be adopted.

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



1 ~~subsection~~ is effectively accomplishing its duties under this Article].

2 [(e) The chair of the POB shall designate one POB  
3 member to serve on each APD policy development committee. The Director  
4 and the POB member designated by the Chair shall each serve as voting  
5 members of such committees, and shall vote in a manner consistent with any  
6 prior related action by the POB, and shall report back to the board about the  
7 outcomes and votes cast at the next regularly scheduled meeting of the POB.]

8 § 9-4-1-5 THE CPOA POLICE OVERSIGHT BOARD.

9 (A) Composition. The POB shall be composed of [~~nine~~ seven] at-  
10 large members who broadly represent the diversity and demographics of the  
11 City by way of, including but not limited to, cultural, gender and geographic  
12 diversity; and who are representative of the stakeholders of the police  
13 oversight process, and who reside within the City of Albuquerque.

14 (B) Qualifications. In addition to the composition standards set  
15 forth above, the following are the minimum qualifications for members of the  
16 POB:

- 17 (1) Have not been employed by law enforcement for one  
18 year prior to appointment; and  
19 (2) Successfully pass a background check; and  
20 (3) Personal history lacking any pattern of unsubstantiated  
21 complaints against APD; and  
22 (4) A demonstrated ability to engage in mature, impartial  
23 decision making; and  
24 (5) A commitment to transparency and impartial decision  
25 making; and  
26 (6) Residency within the City of Albuquerque.

27 (C) Appointment of Members. The City Council shall establish a  
28 well-publicized, fair and equitable application process for appointment to the  
29 POB[, and for filling vacancies]. The City Council, through its staff, shall  
30 accept applications from prospective POB members. Staff shall formulate  
31 recommendations for appointments based on evaluation of the qualification  
32 criteria listed in subsections (A) and (B) above and submit recommendations  
33 for appointment(s) to the City Council for its approval. If a member is eligible

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1 for reappointment, ~~[staff may suggest that member may request]~~  
2 reappointment ~~[of that member]~~ without a formal application process and the  
3 City Council may reappoint accordingly.

4 (D) Membership Term. POB members shall serve a maximum of  
5 two three-year terms on a staggered basis so that no more than ~~[five~~ two] of  
6 the members are eligible for reappointment or replacement each year.

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

19 (F) Orientation and Training. Upon appointment or reappointment  
20 POB members shall complete an orientation and training program consisting  
21 of the following:

- 22 (1) Required ~~[Initial]~~ Orientation ~~[and Training]~~. Prior to  
23 participation in any meeting of the POB, a newly appointed member must first:
  - 24 (a) Be trained by the CPOA staff or CPOA legal  
25 counsel on CPOA ~~[and APD rules,]~~ policies, and procedures; and
  - 26 (b) Attend at least one POB meeting as an observer  
27 ~~(except initial appointees~~ for reappointed members~~).~~

28 ~~[(2) Required Training. Each POB member shall complete a~~  
29 ~~training program within the first six months of the member's appointment that~~  
30 ~~consists, at a minimum, of the following:~~

- 31 ~~(a) Completion of those portions of the APD Civilian~~  
32 ~~Police Academy that APD determines are necessary for the POB to have a~~  
33 ~~sound understanding of the Department, its policies, and the work officers~~

1 perform – for purposes of this training requirement, APD shall identify these  
2 portions of the standard APD Civilian Police Academy Program that are  
3 optional for POB members and shall make other aspects of the program  
4 available for POB members to complete independently;

5 \_\_\_\_\_ (c) Be trained on this ordinance and the duties,  
6 obligations, and responsibilities that it imposes on POB members and the  
7 CPOA;

8 \_\_\_\_\_ (d) State and local laws regarding public meetings,  
9 inspection of public records, governmental transparency, and the conduct of  
10 public officials;

11 \_\_\_\_\_ (e) Ethics for public officials;

12 (b)(f) Civil Rights training, including the Fourth  
13 Amendment right to be free from unreasonable searches and seizures,  
14 including unreasonable use of force;

15 [(e) ~~At least two APD ride-alongs;~~]

16 \_\_\_\_\_ (d) ~~Annual firearms simulation training;~~

17 \_\_\_\_\_ (e) ~~Internal Affairs training;~~

18 (f)(g) Training provided to APD officers on use of force,  
19 including a review and familiarization with all APD policies relating to use of  
20 force, and including policies related to APD's internal review of force  
21 incidents;

22 [(g) ~~Equity and Cultural Sensitivity training;~~]

23 (h) Training on the 2014 DOJ Settlement Agreement  
24 with the City of Albuquerque (or any subsequent agreements), and Findings  
25 Letter of April 10, 2014 (or any subsequent findings letters);

26 [(i) ~~Training on this Police Oversight Ordinance;~~]

27 \_\_\_\_\_ (j) ~~Training on state and local laws regarding public~~  
28 ~~meetings and the conduct of public officials;]~~ and

29 [(k)(i)] A briefing that identifies and explains the  
30 curriculum of all training [currently] received or [anticipated] to be received by  
31 APD officers, including any outside training not provided by the city.

32 (3) Required On-Going Training. POB members shall [be  
33 ~~provided with~~ receive] eight hours of annual training on any changes in law,

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1 policy, or training in the areas outlined under subsection (2) above, as well as  
2 developments in the implementation of the 2014 DOJ Settlement Agreement  
3 (or any subsequent agreements) until such time as the terms of the agreement  
4 are satisfied. POB members shall also participate in at least two police ride-  
5 alongs for every six-months of service on the POB.

6 (4) Recommended Training. POB members are encouraged  
7 to [complete those portions of the civilian police academy that APD  
8 determines are necessary for the POB to have a sound understanding of the  
9 Department, its policies, and the work officers perform, and to] attend  
10 conferences and workshops relating to police oversight, such as the annual  
11 NACOLE conference at city expense depending on budget availability.

12 [(5) The Director shall track training progress for each POB  
13 member, verify completion of the initial and on-going training requirements for  
14 each POB member, and include this information for each POB member as part  
15 of the semi-annual reports required by this ordinance.]

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

22 (H) Subcommittees. The POB may appoint such subcommittees  
23 as are deemed necessary or desirable for the purposes of §§ 9-4-1-1 through  
24 9-4-1-14, provided that, membership on such subcommittees shall be limited  
25 to POB members [and no POB member shall serve on any more than two (2)  
26 committees at any given time].

27 (I) Meetings. The POB shall conduct regularly scheduled public  
28 meetings in compliance with the New Mexico Open Meetings Act, with a  
29 prepared agenda that is distributed in advance to the Mayor, City Council,  
30 Police Chief, and City Attorney. Each POB meeting will begin with public  
31 comments. Only the regularly scheduled monthly meetings and special  
32 meetings held pursuant to submission of petitions will be televised live on the  
33 appropriate government access channel. All other meetings of the POB shall

1 be videotaped and aired on the appropriate government access channel;  
2 however, there is no requirement for providing live television coverage.

3 1. Public Comment. The POB shall allow general public  
4 comment at each of its meetings, and the POB shall also allow comment on  
5 each of its agenda items other than Citizen Police Complaints. The  
6 complainant or complainant's authorized representative in a Citizen Police  
7 Complaint will be provided with a minimum of five minutes to address the POB  
8 relating to the complaint and investigation.

9 [J. Subpoenas. Upon justification by the Director acceptable to the  
10 POB, the POB may by simple majority vote authorize the Director to subpoena  
11 such documents and witnesses as necessary to carry out the CPOA's  
12 investigatory functions. The summoned person may petition the POB or the  
13 district court of the county where he or she resides to vacate or modify the  
14 administrative subpoena. In the case of a refusal to obey a subpoena issued  
15 to any person, the Director may make application to any District Court in the  
16 state having jurisdiction to order the witness to appear before the POB and to  
17 produce evidence if so ordered, or to give testimony touching on the matter in  
18 question. Any summoned person is entitled to legal counsel during all CPOA  
19 or POB proceedings.]

20 § 9-4-1-6 CPOA ADMINISTRATIVE OFFICE.

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

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

25 (1) Independently investigate, or cause to be investigated, all  
26 civilian police complaints and prepare findings and recommendations for  
27 review by the POB;

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

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1 Affairs;

2 (3) Provide staffing to the Police Oversight Board and ensure that  
3 the duties and responsibilities of the CPOA are executed in an efficient  
4 manner, and manage the day to day operations of the CPOA.

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

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

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

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

31 (4) The Director shall monitor all claims of officer involved  
32 shootings and serious uses of force. No APD related settlements in excess of  
33 \$25,000 shall be made for claims without the knowledge of the Director. The

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1 Director shall be an ex-officio member of the Claims Review Board; and

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

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

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

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

17 (E) The Administrative Office shall staff, coordinate and provide  
18 technical support for all scheduled POB meetings, publicize all findings and  
19 reports, recommendations, and/or suggested policy changes.

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

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

30 (H) The Director shall report directly to the POB and lead the  
31 Administrative Office; independently investigate or supervise all  
32 investigations of civilian complaints, audit all IA investigations of complaints,  
33 recommend and participate in mediation of certain complaints, and supervise

1 all CPOA staff.

2 [(I) The Director shall satisfy the initial and ongoing training  
3 requirements for POB members as prescribed by Section 9-4-1-5(F) and report  
4 completion of training activities to the Chair of the POB.]

5 § 9-4-1-7 CPOA DIRECTOR QUALIFICATIONS, SELECTION, RETENTION  
6 AND EVALUATION.

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

9 (B) The Director will be a full-time [~~contractual~~] city employee [directly  
10 responsible only to the POB,] to be selected, removed, or reviewed as follows:

11 (1) The POB, through CPOA staff, shall accept applications from  
12 candidates. The POB shall review the applications and interview candidates,  
13 and submit to the City Council a ranked list of the three candidates that it finds  
14 to be the best qualified to be the Director and the City Council shall appoint  
15 the Director from the three by majority vote. The POB's recommendation to  
16 Council shall be based on the candidates' integrity, capability for strong  
17 management and abilities in investigations, law, management analysis, public  
18 administration, criminal justice administration or other closely related fields.

19 [The POB's recommendation shall, at a minimum, include an evaluation of the  
20 candidates against the provisions and requirements of this subsection 9-4-1-  
21 7.]

22 (2) In lieu of recommending three candidates to the Council, the  
23 POB may recommend to the Council the reconfirmation of the incumbent  
24 Director. [Together with any recommendation for reconfirmation by the POB,  
25 the POB shall submit to the City Council a written basis for its  
26 recommendation to include a formal evaluation of the Director's past  
27 performance, including an evaluation against the duties established for the  
28 Director by this ordinance.] Should the Council decline to reconfirm the  
29 incumbent Director, the Council President shall notify the POB that it needs to  
30 provide the Council with three alternate candidates pursuant to the provisions  
31 of subsection (B)(1)[, and the POB shall so submit within 90 days of such  
32 notice. The City Council may decline to reconfirm the incumbent Director only  
33 for reasonable cause, including but not limited to any failure to fulfill all the

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1 requirements obligations of this ordinance, or ineffective leadership of the  
2 organization in its mission toward civilian police oversight]. Should the  
3 Director not be reconfirmed [or should the confirmation vote be delayed or  
4 postponed for any reason], the current Director may continue to serve in the  
5 same capacity until a new Director is selected and ~~[approved~~ confirmed] by  
6 the City Council. If for any reason there is a period of time during which there  
7 is no Director, the City Council may appoint a temporary Director ~~[of its~~  
8 ~~choosing]~~ by a majority vote. . A temporary Director shall serve in that  
9 capacity only for a period not to exceed six months[, during which time the  
10 POB shall work diligently to select a permanent director].

11 (3) The term of the Director shall be for three years. Once  
12 confirmed, the Director may be removed only upon: 1) a recommendation of  
13 removal to the City Council by the affirmative vote of two-thirds of the  
14 members of the POB; and 2) acceptance of the POB's recommendation by a  
15 simple majority vote of the City Council.

16 (C) The POB shall annually review the performance of the Director taking  
17 into consideration the obligations and duties prescribed by this ordinance and  
18 the performance of the Administrative Office. [A copy of these performance  
19 evaluations shall be delivered to the Chief of Police, the Mayor, and the  
20 President of the City Council for receipt by the Council.]

21 § 9-4-1-8 CIVILIAN COMPLAINT PROCEDURES.

22 (A) Any person claiming to be aggrieved by actions of the Police may file  
23 a written complaint against the department or any of its officers. [Neither the  
24 POB nor any of its members shall file or initiate a complaint on behalf of a  
25 member of the public. Any POB member who files or otherwise initiates a  
26 complaint shall recuse from taking any action on the complaint, including  
27 evaluating the complaint and voting on its disposition.] The POB shall submit  
28 rules and regulations governing civilian complaint procedures to the City  
29 Council for approval, including rules and regulations relative to time limits,  
30 notice and other measures to insure impartial review of civilians' complaints  
31 against members of the police department. Anonymous complaints shall be  
32 accepted.

33 (B) In cooperation with the POB, the Mayor shall designate civilian city

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1 staff to receive written civilian complaints at various locations throughout the  
2 city. The Police Department may also receive written complaints. The party  
3 who receives the complaint shall immediately transmit all civilian complaints  
4 for further investigation to the Director.

5 (C) After the investigation of a civilian complaint is completed, the  
6 Director shall analyze all relevant and material circumstances, facts and  
7 evidence gathered under the investigation. For each investigation, the Director  
8 shall prepare investigation reports with proposed findings and  
9 recommendations and submit them to the POB for its review and  
10 consideration. The Director may share any disciplinary recommendations with  
11 the Chief of Police in advance of their submission to the POB only as  
12 necessary to help ensure timeliness pursuant to any applicable personnel or  
13 union contract requirements. [

14 (D) ]The POB shall [hold a hearing to] review the proposed findings and  
15 recommendations[and. The POB shall adopt and follow rules for such  
16 hearings that implement the requirements of this ordinance and quasi-judicial  
17 procedures as prescribed under New Mexico Law. For purposes of these  
18 hearings, the POB members shall, at a minimum:

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

22 (2) Refrain from any ex-parte communication relating to the  
23 matters and parties under consideration, and recuse from any related hearings  
24 as may be necessary based on improper ex parte communication; any ex-  
25 parte correspondence that is inadvertently received by a member shall be  
26 referred to or otherwise disclosed to the Director and, when appropriate, made  
27 available for review by the relevant complaint and APD officer or their  
28 representatives; and

29 (3) Recuse from any hearing in which he or she has a direct or  
30 indirect personal conflict of interest or cannot otherwise accord a fair and  
31 impartial review, or in which such member's participation would create the  
32 appearance of impropriety or partiality.]

33 [(E) At the close of evidence and any related deliberation, the POB] shall

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1 by majority vote of members present: 1) approve the findings and  
2 recommendations as proposed; 2) approve other findings and  
3 recommendations as determined by the POB and supported by the  
4 investigation file; or 3) defer action on the matter to allow for further  
5 investigation or analysis [on specifically identifiable matters] by the Director.  
6 As part of its review, the full investigation file shall be made available to the  
7 POB.[]

8 (F) Upon approval of findings and recommendations by the POB, the  
9 Director shall prepare and submit a public record letter to the civilian  
10 complainant, with a copy to the Chief of Police, that outlines the findings and  
11 recommendations as approved. Unless a hearing is requested by the civilian  
12 complainant, within 30 days of receipt of the decision of the POB[], the Chief  
13 of Police shall notify the POB and the original civilian complainant of his or  
14 her final disciplinary decision in this matter in writing, by certified mail [and as  
15 otherwise prescribed by subsection 9-4-1-4(C)(3)(g) of this ordinance.]

16 § 9-4-1-9 REQUESTS FOR HEARING; APPEALS OF DISCIPLINARY  
17 DECISIONS.

18 (A) Requests for Hearing. Any person who has filed a civilian  
19 complaint and who is dissatisfied with the findings and/or recommendations  
20 approved by the POB may request reconsideration by the POB within 30 days  
21 (inclusive of weekends and holidays) of receipt of the public record letter. The  
22 POB may grant a request for reconsideration only upon a showing by the  
23 complainant that: 1) a policy was misapplied in the evaluation of the  
24 complaint; 2) that the findings or recommendations were arbitrary, capricious  
25 or constituted an abuse of discretion, or 3) that the findings and  
26 recommendations were not consistent with the record evidence. The POB  
27 shall notify the Chief of Police of the request for hearing and hold a hearing on  
28 the matter at its next regularly scheduled meeting provided that there is a  
29 period of at least ten days between the receipt of the request for hearing and  
30 the next POB meeting. [Any such hearing shall be conducted in accord with  
31 quasi-judicial procedures and section 9-4-1-8(D).] Upon close of the hearing  
32 the POB may modify or change the findings and/or recommendations of the  
33 public record letter and may make further recommendations to the Chief of

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1 Police regarding the findings and/or recommendations and any discipline  
2 imposed by the Chief of Police or proposed by the Chief of Police. Within 20  
3 days of receipt of the decision of the POB, the Chief of Police shall notify the  
4 POB and the original civilian complainant of his or her final disciplinary  
5 decision in this matter in writing, by certified mail.

6 (B) Appeals of the Disciplinary Decision. If any person who has  
7 filed a civilian complaint under §§ 9-4-1-1 through 9-4-1-14 is not satisfied with  
8 the final disciplinary decision of the Chief of Police or any matter relating to  
9 the Chief of Police's handling of his or her complaint, he or she may request  
10 that the Chief Administrative Officer review the complaint, the findings of the  
11 POB and the action of the Chief of Police by requesting such review in writing  
12 within 30 days (inclusive of weekends and holidays) of receipt of the Chief of  
13 Police's letter pursuant to § 9-4-1-9(A). Upon completion of his or her review,  
14 the Chief Administrative Officer shall take any action necessary, including  
15 overriding the decision of the Chief of Police regarding disciplinary action, to  
16 complete the disposition of the complaint. The Chief Administrative Officer  
17 shall notify in writing, by certified mail, the complainant, the individual against  
18 whom the complaint was filed, the Chief of Police and the Director, of the  
19 results of his or her review and any action taken.

20 § 9-4-1-10 REPORTS.

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

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

26 (B) Discussion of issues of interest undertaken by the POB which  
27 may include suggested policy and/or procedural changes, a listing of  
28 complaints and allegations by Council District, statistical ethnicity of subject  
29 officers, statistical ethnicity of complainants, and updates on prior issues  
30 and/or recommendations;

31 (C) The CPOA's findings and the Chief of Police's issuance of  
32 discipline on those findings and the ongoing disciplinary trends of the Police  
33 Department;

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1 (D) Information on all public outreach initiatives undertaken by the  
2 POB or the Director such as speaking engagements, public safety  
3 announcements, and/or public information brochures on the oversight  
4 process;

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

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

10 (G) The amount of time that the POB dedicated to the policy  
11 activities prescribed by § 9-4-1-4(C)(5) relative to its other activities over the  
12 past quarter.

13 § 9-4-1-11 EVALUATION.

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

20 § 9-4-1-12 SPECIAL MEETINGS.

21 On the petition of 1,000 or more civilians in the City of Albuquerque  
22 filed in the Office of the City Clerk, the POB shall hold a special meeting for  
23 the purpose of responding to the petition and hearing and inquiring into  
24 matters identified therein as the concern of the petitioners. Copies of the  
25 petition shall be filed with the POB by the City Clerk. Notice of such meeting  
26 shall be given in the same manner as notice is given for other meetings of the  
27 POB and shall comply with the State Open Meetings Act.

28 § 9-4-1-13 CONFIDENTIALITY.

29 The POB hearing process shall be open to the public to the extent  
30 legally possible so that it does not conflict with state or federal law. However,  
31 upon the opinion of the CPOA Attorney that the law permits such action, some  
32 of the details of the investigations of the Director, or the designated  
33 independent investigator, shall become privileged and confidential. The

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1 details of investigations should not be open to the public subject to the  
2 opinion of the CPOA Attorney and the Director. Compelled statements given to  
3 the Director, or the designated independent investigator, will not be made  
4 public. The Director may summarize conclusions reached from a compelled  
5 statement for the report to the POB and the Chief of Police, and in the public  
6 record letter sent to the complainant. Nothing in this ordinance affects the  
7 ability of APD to use a compelled statement in a disciplinary proceeding.

8 § 9-4-1-14 MANDATORY COOPERATION AGREEMENT.

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

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

32 SECTION 6. COMPILATION. The ordinance amendment prescribed by  
33 SECTIONS 1, 2, 3, and 4 shall amend, be incorporated in and made part of the

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- 1 Revised ordinances of Albuquerque, New Mexico, 1994.
- 2 SECTION 7. EFFECTIVE DATE. This ordinance shall take effect five days
- 3 after publication by title and general summary.
- 4
- 5

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