

Police Oversight Board
Rules and Regulations 2015

(amended 9/14/06, 3/8/07, 3/5/09, 11/8/12, 12/13/12, and 4/9/15)

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Rules and Regulations Governing the Police Oversight Board (POB) of the Civilian Police Oversight Agency (CPOA)

ARTICLE I-MEETINGS

Section 1. Regular Meetings.

- A. The regular meetings of the Police Oversight Board (POB) for the City of Albuquerque will be typically held at 4:00 p.m. on the second Thursday of every month and at times consistent with resolutions adopted by the POB. Changes in Meeting time and place shall be made with as much advanced notice as practicable. Meetings are normally held in the City Council/Board Chambers, Albuquerque/Bernalillo County Government Center.
- B. In December or as early as possible each calendar year, the Chair of the POB shall introduce a resolution in compliance with the Open Meetings Law specifying the date and time for the regular meetings of the POB.
- C. Regularly scheduled public meetings will be conducted with a prepared agenda that is distributed in advance to the Mayor, City Council, Police Chief, and City Attorney, and will comply with the New Mexico Open Meetings Act. The CPOA Administrative Office shall also publish the Agenda on its website 72 hours in advance and provide a copy of the Agenda to the City Clerk.
- D. Except for emergency matters, the POB shall take action only on items appearing on the agenda. For the purpose of this subsection, an "emergency matter" refers to unforeseen circumstances that if not addressed immediately by the POB will likely result in injury or damage to persons or property or substantial financial loss to the City.
- E. Each POB meeting will begin with public comment. The Rules for comment are contained in Section 6 below.
- F. Regularly scheduled meetings will be televised live on the appropriate government access channel, if it is operating.
- G. If the POB needs to consult with their attorney on an issue during the public meetings, the POB will comply with the State Open Meetings Law, but may properly have privileged communications with their attorney. These closed consultations will be kept to a minimum.

Section 2. Special Meetings.

- A. Special meetings may be called by the Chair or by three Board Members provided that written notice of such meetings shall be given to the public and each Board Member at least 72 hours before the time set for the meeting.
- B. Except for emergency matters, the POB shall take action only on items appearing on the agenda. For the purpose of this subsection, an "emergency matter" refers to unforeseen circumstances that if not addressed immediately by the POB will likely result in injury or damage to persons or property or substantial financial loss to the City.
- C. Special meetings must comply with the Open Meetings Law and shall be videotaped and aired on the appropriate government access channel; however, there

is no requirement for providing live television coverage.

- D. Special meetings may also be required in accordance with §9-4-1-12 Revised Ordinances of Albuquerque 1994 (ROA 1994) upon petition of 1000 or more citizens in the City of Albuquerque and filed in the Office of the City Clerk.
- E. The POB may have closed meetings for training purposes or any other purpose allowed by law. No business or other POB issues may be discussed during these closed meetings unless otherwise allowed by law.
Closed meetings must be announced in advance and explained in public as to the reasons for a closed meeting (only for training). After the closed meeting and at the next regularly scheduled meeting, the Chair will announce what occurred at the closed meeting, if it is appropriate to do so.
- F. The New Mexico Open Meetings Act, §1-01-51, et seq., NMSA will be complied with for closed meetings. Nothing in this rule is meant to forbid Board Members from receiving training individually or in groups constituting less than a quorum.

Section 3. Emergency Meetings.

- A. Notwithstanding any provision contained herein, the Chair of the POB, may in the event of an emergency, call with whatever notice is possible under the circumstances, a meeting of the POB to consider any matter. For the purpose of this subsection, an "emergency matter" refers to unforeseen circumstances that if not addressed immediately by the POB will likely result in injury or damage to persons or property or substantial financial loss to the City.
- B. These meetings will comply with the New Mexico Open Meetings Act and shall be videotaped and aired on the appropriate government access channel. There is no requirement for providing live television coverage.

Section 4. Compliance with City Ordinances and State Statutes.

- A. Substantial compliance with any one of the foregoing methods of giving notice shall constitute compliance with Chapter 10, Article 15 NMSA, 1978, as amended.
- B. Nothing herein shall prevent the use of additional means or methods of giving notice of regular or special meetings; nothing herein shall require new notice for any public meeting for which notice has been given pursuant to these rules and which is recessed or adjourned, except an oral announcement of the date, time, and place shall be made by the Chair before such meeting is recessed or adjourned.
- C. The Chair of the POB or anyone designated by the Chair is hereby authorized to give any such foregoing notice and the Chair of the POB may establish additional means or methods of making known to the public the date, time, and place of any regular meeting of the POB.

Section 5. Quorum.

- A. A majority of the Board Members of the POB shall constitute a quorum thereof. The majority of Board Members shall be of those Board Members who have been appointed and approved and have not resigned.
- B. For example, the amended ordinance provides for a total of nine Board Members. A quorum is five Board Members. If two Board Members resigned before additional Board Members were appointed, with seven Board Members remaining, the quorum would be four of the seven Board Members.

Section 6. Public Comment and Addressing Meetings.

- A. Regularly scheduled meetings will begin the substantive portion of the meeting with public comment. Members of the public may sign up for public comment before the meeting begins. The POB shall allow general public comment at each of its meetings, and the POB shall also allow comment on each of its agenda items. Public comment about non-Citizen Police Complaints (CPC) matters shall be limited to three minutes, unless extended by the Chair.
- B. At a Regular Meeting when an individual Citizen Police Complaint case is on the Agenda to be reviewed, the complainant or complainant's authorized representative in the Citizen Police Complaint will be provided with a minimum of five minutes to address the POB relating to the complaint and investigation.
- C. During public comment, other than when the complainant or complainant's authorized representative are speaking about their CPC case on the Agenda, public speakers are not restricted as to topic. Comments on agenda items must be germane to that particular agenda item. Speakers should be polite and address the Chair of the Board rather than other members of the Board or other persons. Speech that involves incitement to violent action, false statements of fact, obscenity, fighting words, or threats is prohibited and will subject that member of the public to removal following one warning from the Chair.
- D. Persons may be invited by the POB to address the board. These invitees may be given a time to be established by the Chair, but normally will be 10 minutes. Invitees included, but are not limited to:
 - The Mayor or the Mayor's designated representative;
 - The City Councilors or their designated representative;
 - The City Attorney or his/her designated representative;
 - The Chief of Police or his/her designated representative; and/or
 - The CPOA Executive Director or his/her designated representative.

Section 7. Records.

Unless otherwise provided, the staff of the CPOA Executive Director shall serve as the custodian of records for the POB. The City Clerk shall keep the minutes and records of all POB proceedings.

Section 8. Attendance.

Board Members shall attend all meetings of the POB unless excused by the Chair. The appointment of any member of the POB who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the POB to the City Clerk.

Section 9. Open Meetings.

All meetings of the POB and its Sub-Committees shall be open to the public. The POB may close such meetings upon proper notice and recording to the public or as otherwise allowed by law.

ARTICLE II-ORGANIZATION OF THE POLICE OVERSIGHT BOARD

Section 1. Election of Chair and Vice Chair.

- A. At the first meeting of the POB in the month of March of each year, the POB shall elect one of its members to act as Chair and another member to act as Vice Chair of the POB. The Chair and Vice Chair shall serve at the pleasure of the POB until March of the next year and until their successors are elected.
- B. No officers shall be eligible to succeed themselves in the same office.
- C. The POB shall be the judge of the election and qualification of its members.

Section 2. Powers and Duties of the Chair and Vice Chair.

- A. The Chair shall call the Board Members to order, and upon a quorum being present, shall proceed to business.
- B. The Chair shall possess the powers and perform the duties described below. The Chair shall:
 1. Preserve order and decorum and have general direction of the Board/chambers or any location where the POB holds its meetings.
 2. Assign agenda items and have the responsibility for preparation of the agenda and dissemination of the agenda with the public notice for the meeting.
 3. Decide all questions of order, subject to a Board Members right to appeal to the POB as a whole.
 4. Speak to points of order in preference to other Board Members.
 5. Vote upon all questions in the same manner as other Board Members.
 6. Announce the result promptly on the completion of every vote.
 7. Appoint all members to Sub-Committees whether standing, joint, or special, subject to the approval of the POB. Committees shall consist of any number of Board Members fewer than a quorum. The Chair shall designate the Chair for each committee, subject to the approval of the POB.
 8. Sign all letters in conjunction with the business of the POB.
 9. Receive all formal messages and communications from the Mayor, City Council, and others.
 10. Shall hold over or refer to the appropriate Sub-Committee any issues of interest to the POB.
- C. The Chair may speak, as other Board Members, on general questions.
- D. In the absence of the Chair, upon the Chair's inability to act, or upon request of the chair, the Vice Chair shall preside and shall have all the powers and authority of the Chair.

Section 3. Sub-Committees.

- A. Membership on any Sub-Committee shall be limited to Board Members.
- B. No Sub-Committee shall hold a hearing without a quorum of the Committee present. Any Board Member who is not a member of the Committee may be designated as an alternate for any Committee member who cannot be present at the meeting. The alternate shall be selected by the Board Member for whom the alternate is serving.
- C. The Chair of a Sub-Committee shall vote on all matters before the Sub-Committee as other members of the Sub-Committee. The Sub-Committee Chair

- may make motions and second motions.
- D. At each Regular POB meeting following a Sub-Committee meeting, the Sub-Committee Chair shall give an oral report from the Sub-Committee meeting. The Regular Meeting Minutes shall contain a summary of the Sub-Committee Report.
 - E. The POB Chair may request Sub-Committee Reports to be in writing and submitted to the full POB. If written reports are submitted, a minority report from the Sub-Committee may be also submitted and included in the Sub-Committee report.
 - F. The Sub-Committees shall report on all matters referred to them without unnecessary delay. If a Sub-Committee refuses or neglects to report on any matter referred to it, the Chair may take the matter from the Sub-Committee.
 - G. The rules and orders of the POB shall apply to all committees, except as otherwise provided:
 - 1) Sub-Committees may establish their own time limitations for witnesses addressing the committee and for debate by members of the Sub-Committee.
 - H. If the Chair so delegates, a Case Review Sub-Committee may review Citizen Police Complaints matters and report their review at the next Regular POB Meeting. The Case Review Sub-Committee may recommend CPC cases to be placed as a consent agenda item at the Regular POB Meeting. At the Regular POB Meeting, any Board Member may request that a CPC case which the Case Review Sub-Committee placed on the consent agenda to be placed on the non-consent POB Agenda.

ARTICLE III- PROCEDURES

Section 1. General Rules.

Any matter not covered by these rules shall be governed by Roberts' Rules of Order (latest edition), or by a decision of the Chair, subject to the right of appeal.

Section 2. Conflicts of Interest

- A. A Board Member shall withdraw from any proceeding in which he or she has a direct or indirect conflict of interest or the Board Member does not believe he or she can provide a fair and impartial hearing.
- B. Board Members should err on the side of caution and withdraw from any proceeding in which there is an appearance of a conflict of interest.

Section 3. Motions

- A. The Chair may make motions or second motions.
- B. No motions shall be entertained or debated until announced by the Chair, and every motion shall be seconded, prior to debate.

Section 4. Debate.

- A. Any Board Member wishing to speak, debate, make a motion, submit a report, or conduct other business shall address the Chair and shall not proceed further until recognized by the Chair.
- B. If two or more Board Members seek recognition at the same time, the Chair shall name the one who shall speak first.

- C. The Board Member who sponsors a motion shall have the privilege of opening and closing debate. A Board Member may direct an inquiry and receive a response without yielding the floor.
- D. No Board Member shall be permitted to speak more than once on any motion until every Board Member desiring to be heard has been allowed to speak. Nor shall any Board Member, except the sponsor of the motion speak more than a total of five minutes on any motion.
- E. No Board Member shall be interrupted when speaking, nor shall any motion be in order until the Board Member has concluded.
- F. No question shall be asked of the Board Member except those directed through the Chair with the consent of the Board Member.

Section 5. Voting.

- A. Voting shall be in the form of "Yes" or "No". Any action on a question is lost by a tie vote. Every Board Member who is within the room shall vote upon each question, except those who have disqualified themselves due to a conflict of interest.
- B. A Board Member shall be allowed to change his/her or her vote but only before the result has been announced.
- C. A Board Member may request to vote by telephone or other similar device when a medical or emergency situation exists. Such voting can only take place upon the approval of the Chair and provided that the Board Member can be heard on a speaker to enable the POB and the public to determine when the Board Member is speaking and casting a vote.
- D. Reconsideration. Any Board Member who voted with the prevailing side on any question may move at the same meeting to reconsider the question. A motion to reconsider shall require the affirmative vote of a majority of Board Members present.
- E. An appeal may be made on any decision of the Chair. The Board Member appealing the Chair's decision will speak and the Chair may respond. Such appeals shall be acted upon immediately and no other motions shall be entertained until the question has been decided. A vote of the majority of the Board Members present shall be required to sustain an appeal.
- F. Any Board Member may move to end debate. A majority of the Board Members present must agree to end the debate or it may continue.

Section 6. Decorum.

Board Members or other speakers shall confine their remarks to the question under discussion or debate, avoiding personal attacks. No Board Member shall engage in private discourse or commit any other act tending to distract the attention of the POB from the business before it.

Section 7. Early Departure.

Any Board Member leaving a POB meeting early shall make the Chair aware of such departure as early as possible, so that allowances in scheduling business can be made. Any Board Member leaving a Committee meeting when the departure will cause a loss

of quorum shall make every effort to secure and alternate Board Member to sit on the Committee.

Section 8. Order of Business.

- A. The POB shall consider business in the following order:
 1. Welcome and Call to Order
 2. Pledge of Allegiance
 3. Public Comment
 4. Review/Approval of Minutes
 5. Citizen Appeals
 6. Findings by POB
 7. Reports from Sub-Committees
 8. Reports from City Staff, including the CPOA Executive Director, Mayor, City Council, City Attorney, and Albuquerque Police Department.
 9. Other Business
- B. The POB may, upon the affirmative vote of a majority of the Board Members present, proceed out of order to any order of business or return to any prior order of business.
- C. During the business for Findings by the POB, if any Board Member wishes to discuss a particular Finding (CPC or Police Shooting), the Board Member may have that Finding placed separately in that portion of the agenda. Those Findings will be handled individually from a consent agenda.
- D. The CPOA findings letter will not be sent to the citizen until approved by the POB. This approval may be delegated to a Sub-Committee.
- E. The CPOA findings letter will be mailed to the complainant the next business day after approval by the POB. While the public record letter may be provided to the complainant immediately, the public record letter will not be provided to the public or the media until five days after approval by the POB or upon receipt by the complainant. The delay is to provide the complainants a reasonable opportunity to receive the information before another member of the public or the media. This is an effort to notify the complainant about the decisions of the POB before the citizen might be informed of them from another person or in the media. (Section E amended 9/ 14/06)

Section 9. Minutes

The CPOA Staff shall prepare Meeting Minutes for all Regular, Special, Emergency POB Meetings and Sub-Committee meetings. A draft of meeting minutes shall be available within 10 days after a meeting is held.

Section 10. Administrative Closing of Civilian Police Complaints. (revised 4/9/15)

- A. The CPOA Executive Director, with the approval of the POB, may administratively closed CPCs.
- B. Complaints may be administratively closed for any one of the following reasons :
 1. The officers complained about are not APD officers.
 2. The officer is deployed for military duty for an extended period of time.
 3. If, after thorough investigation, the officer involved in the alleged conduct cannot be identified.

4. The complaint was successfully mediated.
5. The citizen withdrew the complaint. If the CPOA Executive Director determines the complaint is too serious to ignore, the complaint may be investigated even if the civilian attempts to withdraw it.
6. The complaint contains no allegations of violations of Standard Operating Procedures.
7. Even if all the facts were proven to be true, there would be no violations of Standard Operating Procedures.
8. Allegations concern the perjury of officers during testimony in court. These are determinations to be made by the court or District Attorney.
9. Complaints of criminal action by the officers. Criminal cases may be investigated first as a criminal matter and after the criminal investigation is completed, the CPC may be reopened.
10. Administrative closing of a complaint investigation shall be used for the most minor policy violations that do not constitute a pattern of misconduct, duplicate allegations, or allegations that even if true would not constitute misconduct.
(revised 4/9/14 Settlement Agreement Paragraph 184)

Section 11. Request for Reconsideration/Appeals to the POB.

- A. Any person who has filed a civilian complaint and who is dissatisfied with the findings and/or recommendations approved by the POB may request reconsideration by the POB within thirty days of receipt of the public record letter.
- B. The POB may grant a complainant's request for reconsideration only upon a showing by the complainant that:
 - 1) a policy was misapplied in the evaluation of the complaint;
 - 2) that the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion; or
 - 3) that the findings and recommendations were not consistent with the record evidence.
- C. If the POB grants a complainant's request for reconsideration, the POB shall notify the Chief of Police of the request for hearing and hold a hearing on the matter at its next regularly scheduled meeting provided that there is a period of at least ten (10) days between the receipt of the request for hearing and the next POB meeting
- D. Notice shall be sent to the Complainant one week prior to a hearing on their request for reconsideration.
- E. Notice for any reconsideration hearing shall be given in the Agenda for the POC.
- F. Complainants may request a delay in writing to a hearing date within the next two months. Failure to appear at the hearing or to request a delay in writing may result in the POC acting on the request for reconsideration without further input from the Complainant.
1. Time allowed for request for reconsideration/appeal hearings shall be as follows:
The preferred sequence and normal maximum times allowed shall be as follows:
 - a. 15 minutes for the Complainant
 - b. 5 minutes for the police officer if present
 - c. 10 minutes for APD
 - d. 10 minutes for the CPOA Executive Director

e. 5 minutes for Complainant

The POC may combine separate appeals of the same action, in which case each appeal will receive an equal share of the Complainant's time. The Chair shall indicate in advance the division of time. The parties shall decide on the speakers to use the time. This decision is not subject to further appeal.

2. Evidence:
 - a. New evidence may be accepted by the POB at the appeal hearing. Acceptance of new evidence is discretionary and the POB may rely on the evidence on the record.
 - b. If the POB decides that certain additional evidence is necessary and appropriate for the proper disposition of the appeal, it may accept the evidence offered during the hearing or require the CPOA Executive Director to obtain such evidence for them.
 - c. New evidence, which could have been put in the record during previous investigations or hearings, is not favored for introduction at POB appeal hearings. New evidence, which clarifies evidence already in the record may be allowed. New evidence, which is offered to contradict evidence in the record, may be allowed if such evidence appears convincing and is on an important matter.
 - d. Board Members may ask questions at any time of the Complainants, the CPOA Executive Director, APD, witnesses, and/or, if present, the police officer. When a Board Member asks questions, the time limit is stayed until questioning is completed.
(Amended 03/05/09)
3. With regard to any request for reconsideration that has been filed with and is pending before the POB:
 - a. No Board Member shall communicate outside a hearing with the Complainant or the Complainant's representative.
 - b. No Board Member shall knowingly communicate with a member of the public or an organization about the subject of the appeal. Information and correspondence that is not in the record at the time the appeal is filed is not evidence and should not be considered in making a decision unless accepted as new evidence.
 - c. No Board Member shall conduct their own investigations or add their own evidence to the record regarding any appeals.
 - d. Any correspondence regarding the subject of an appeal that is an *ex parte* communication and is inadvertently received by a Board Member shall be delivered to the CPOA Executive Director and be available for review by the Complainant.
 - e. Notwithstanding the above, the CPOA Executive Director and CPOA staff may, upon the request of a Board Member, communicate with that Board Member at any time and by any means. Copies of any written materials from the CPOA Executive Director shall be distributed to all parties.
4. A Board Member shall withdraw from any proceeding in which he or she has a direct or indirect conflict of interest or the Board Member does not believe he or she can provide a fair and impartial hearing.
 - a. Board Members should err on the side of caution and withdraw from any proceeding in which there is an appearance of a conflict of interest.
 - b. If the number of Board Members drops below a quorum, Complainants may waive the quorum and the remaining Board Members may hear and vote on the appeal.
 - c. If the number of Board Members drops below a quorum, the hearing may still

- be heard by the POB without a vote and the entire appeal forwarded to the CAO for final decision.
5. The POB may affirm, modify or change their original findings
 6. The POB may make further recommendations to the Chief regarding the findings and any discipline imposed or proposed by the Chief .
 7. Decisions on appeals shall be made by a majority of the Board Members present. If the POB vote on the appeal ends in a tie, the original findings remain the final findings.

Section 12. Appeals to the CAO.

- A. Appeals of the Disciplinary Decision. If any person who has filed a civilian complaint under this ordinance is not satisfied with the final disciplinary decision of the Chief of Police or any matter relating to the Chief of Police's handling of his or her complaint, he or she may request that the Chief Administrative Officer review the complaint, the findings of the POB and the action of the Chief of Police by requesting such review in writing within 30 calendar days of receipt of the Chief of Police's letter pursuant to § 9-4-1-9(A).
- B. Upon completion of his or her review, the Chief Administrative Officer shall take any action necessary, including overriding the decision of the Chief of Police regarding disciplinary action, to complete the disposition of the complaint.
- C. The Chief Administrative Officer shall notify in writing, by certified mail, the complainant, the individual against whom the complaint was filed, the Chief of Police and the CPOA Executive Director, of the results of his or her review and any action.

Section 13. Final Findings.

- A. The final findings of the POB shall be placed with the Chiefs findings in the Internal Affairs Unit Discipline Status Sheet in the officer's Retention File.
- B. If the case is appealed to the CAO, then the CAO's findings shall be the final findings. The Chief's findings and the POB's findings in APD's records shall be retained.

Section 14. Amendment of Rules.

These rules, or any part thereof, may be amended, repealed, altered or rescinded by a vote of a majority of all Board Members and after two week's notice of an intended motion pursuant to City Ordinance § 2-6-1-4 (C). These Rules shall not be used to change the clear meaning of the Police Oversight Ordinance.

Section 15. Suspension of the Rules.

Except for charter, statutory, or ordinance provisions, these rules, or any part thereof, may be temporarily suspended by a vote of two-thirds of the Board Members present. When the suspension of a rule is requested and no objection is offered, the Chair shall announce the rule is suspended and the POB may proceed accordingly.

Section 16. Time Computation.

In computing any period of time prescribed or allowed by these rules, by the Police Oversight Ordinance, or by any applicable statute or ordinance, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

ARTICLE IV-POWERS AND DUTIES OF THE BOARD

Section 1. Source of Authority.

- A. The Police Oversight Board and the Civilian Police Oversight Agency were established in 1998 by the City Council for the City of Albuquerque in the Police Oversight Ordinance, subsequently codified as Chapter 9 of the Albuquerque Code of Ordinances, §9-4-1-1 *et seq.* ROA 1994.
- B. The Board is the governing authority of the Civilian Police Oversight Agency and has the power to promulgate rules implementing the provisions of the Law upon City Council approval of these rules and regulations.

Section 2. Purpose.

- A. A properly conceived and functioning police oversight system is necessary to promote accountability of the police officers and protect the rights of civilians.
- B. The POB is to provide a means for prompt, impartial, and fair investigation of all citizen complaints brought by individuals against the Albuquerque Police Department.
- C. The POB is to foster and perpetuate policing policies and practices that effectively maintain social order and which at the same time foster mutual trust and cooperation between police and civilians.
- D. The POB is to ensure that the civilian police oversight body functions as independently as possible from the executive and legislative branches of government of the City of Albuquerque.
- E. The commission is to gather and analyze data on trends and potential issues concerning police conduct and practices and the related impacts on the community and individuals.
- F. The POB is to provide policy guidance to the City Council, the Mayor and the Chief of Police.
- G. The POB will oversee the full investigation and/or mediation of all citizen complaints.
- H. Complaints other than misconduct may be resolved informally or through mediation. Administrative closing or inactivation of a complaint investigation shall be used for the most minor policy violations that do not constitute a pattern of misconduct, duplicate allegations, or allegations that even if true would not constitute misconduct.
- I. The POB will audit and monitor investigations, incidences of use of force and/or police shootings under investigation by APD's Internal Affairs.
- J. The POB will gain the cooperation of APD and solicit public input by holding regularly scheduled meetings.
- K. The POB will engage in a long term planning process through which it identifies major problems and establishes a program of policy suggestions and studies each year.
- L. The POB will recommend to the Mayor and City Council during the City's budget process, their proposed budget for provision of such staff as is necessary to carry out the powers and duties of the Police Oversight Ordinance, including the funding for the Civilian Police Oversight Agency, staff, and all necessary

operating expenses.

Section 3. Access to Documentation and Personnel/Subpoenas.

- A. The Police Oversight Board may issue subpoenas on its own initiative, in which case a showing of relevance is not required and an appeal need not be pending.
- B. The subpoena shall be issued by the City Clerk's Office and signed by the Chair of the Police Oversight Board or his/her designee.
- C. Any applicable witness and travel fees and costs associated with service of process shall be the responsibility of the Police Oversight Board.
- D. The City shall ensure that the agency, including its investigative staff and the CPOA Executive Director, have access to all APD documents, reports, and other materials that are reasonably necessary for the agency to perform thorough, independent investigations of civilian complaints and reviews of serious uses of force and officer-involved shootings. At a minimum, the City shall provide the agency, its investigative staff, and the CPOA Executive Director access to:
 - a) all civilian complaints, including those submitted anonymously or by a third party;
 - b) the identities of officers involved in incidents under review;
 - c) the complete disciplinary history of the officers involved in incidents under review;
 - d) if requested, documents, reports, and other materials for incidents related to those under review, such as incidents involving the same officer(s);
 - e) all APD policies and training; and
 - f) if requested, documents, reports, and other materials for incidents that may evince an overall trend in APD's use of force, internal accountability, policies, or training.
- E. The City shall provide reasonable access to APD premises, files, documents, reports, and other materials for inspection by those appointed to the agency, its investigative staff, and the CPOA Executive Director upon reasonable notice. The City shall grant the agency the authority to subpoena such documents and witnesses as may be necessary to carry out the agency functions identified in this Agreement.

Section 4. Burden of Proof.

- A. All findings will be made based on a preponderance of the evidence.
- B. The burden of proof is not on any particular party to the complaint.

Section 5. Attendance at the National Association of Civilian Oversight of Law Enforcement Annual conferences.

- A. Attendance by all Board Members is highly encouraged. The POB will pay the travel and attendance expenses of as many Board Members each year as fiscally responsible. Board Members are also encouraged to attend at their own expense.
- B. The Chair shall select which Board Members may attend and in which priority order for funding. The Chair shall consider such factors as whether the Board Member has attended previously and when the term of the Board Member ends. The decision of the Chair is final.
- C. The CPOA Executive Director and CPOA staff should attend whenever financially

feasible.

Section 6. Complaints about POB Board Members.

- A. The Police Oversight Board will not address complaints against another Board Member. All Complaints of this nature will be forwarded to the City Council's liaison to the POB.
- B. If the complaint relates to a possible conflict of interest, Board Members will consider the complaint and decide whether an appearance of a conflict of interest exists and act accordingly.

Section 7. Complaints about the CPOA Executive Director.

- A. The POB acts like the supervisor over the CPOA Administrative office.
- B. The CPOA Executive Director is a full-time contractual city employee governed by the contract with the City and the Police Oversight Ordinance.
- C. The Police Oversight Board reviews all complaints against the CPOA Executive Director and may take some actions or may recommend to the Mayor that certain supervisory actions be taken, including dismissing the complaint, conducting their own informal investigation into the complaint, recommending specific administrative action, requesting additional formal investigation, etc.
- D. To the fullest extent possible and in accordance with the Police Oversight Ordinance, this process will be made public.

Section 8. Complaints by the CPOA Executive Director, CPOA Staff /POB against APD employees.

- A. This section applies to complaints that the CPOA Executive Director, CPOA Staff, or POB Board Members may file as individuals based on incident they may have personally witnessed or where they are claiming to be aggrieved by actions of the APD employees.
- B. Complaint filed by a Board Member.
 - 1. The Board Member will be excused from participating on any findings, votes, or recommendations concerning the complaint.
 - 2. POB Board Members will decide individually whether or not they have an appearance of a conflict of interest. Any POB Board Member may raise the possibility of a conflict of interest by another POB Board Member.
 - 3. If there is not a quorum of Board Members available to make decisions, then the appeal may be heard by the POB but no findings or recommendations will be made on the complaint and the appeal will be forwarded to the CAO for final decision.
- C. Complaints filed by CPOA Staff.
 - 1. The CPOA staff will not investigate this complaint. It may be investigated by an outside investigator at the discretion of the CPOA Executive Director
 - 2. The POB will make findings unless there is a conflict of interest. These finding will be reviewed by the Chief of Police and finalized by the POB in the same manner as other citizen complaints. (Amended and Section added 9/14/06)
- D. Complaint filed by the CPOA Executive Director.

1. The CPOA Executive Director will be excused from participating on any findings or recommendations as the CPOA Executive Director concerning the complaint, but may act and is entitled to the same rights as any person who filed a complaint.
2. The CPOA Executive Director will hire an independent investigator to investigate the complaint, make findings, and write the public record letter.
3. The independent investigator will act as the CPOA Executive Director.
 - a. Ensure the investigation is thorough, impartial, and free of political influences.
 - b. Write the public record letter, including therein the summary and conclusions from the officers' compelled statements.
 - c. Ensure the public record Letter is mailed to the CPOA Executive Director, who may appeal the findings to the POB.
 - d. The POB will not make findings or recommendations on the CPOA Executive Director's complaint, but may hear the appeal.
 - e. The appeal will be sent to the CAO for final decision.

Section 9. POB Right to Counsel.

The CPOA may retain or employ independent legal counsel on a contractual basis to advise and represent the CPOA. If so retained, the CPOA's legal counsel shall represent the CPOA in the courts, and shall advise the CPOA as to any legal matters relating to this ordinance and the CPOA's duties, responsibilities, and procedures except for CPOA personnel matters which shall remain under the 31 authority of the City Attorney's Office.

Section 10. Indemnification of CPOA Staff and POB.

- A. In the event the CPOA Executive Director, CPOA staff, or POB members are named as defendants in any lawsuit in connection with advice given or actions properly taken under the terms of the CPOA Executive Director's contract, the City will indemnify, provide representation, including outside counsel, if appropriate, and hold the CPOA Executive Director and/or CPOA staff harmless for any liability or claim which is or may be asserted in the capacity of CPOA Executive Director or CPOA staff arising out of the CPOA Executive Director's agreement with the City and while acting on behalf of and in service to the city in an official capacity.
- B. The City shall provide POB Board Members with legal representation including, if appropriate, outside counsel. The City will hold the POB Board Members harmless for any liability or claim which is or may be asserted while the Board Members act on behalf of and in service to the city in their capacity of POB Board Members

ARTICLE V- PROCEDURES WHEN THERE IS NO CPOA EXECUTIVE DIRECTOR AND SELECTION OF CPOA EXECUTIVE DIRECTOR

Section 1. The CPOA Executive Director Is Critical.

- A. The CPOA Executive Director is critical to successful civilian oversight of the police department. This is recognized by Section 9-4-1-7 ROA 1994 of the Police Oversight Ordinance which provides the CPOA Executive Director may continue to serve in the same capacity until a new CPOA Executive Director is selected and

approved by the City Council. If for any reason there is a period of time during which there is no CPOA Executive Director, the City Council may appoint a temporary CPOA Executive Director of its choosing by a majority vote. A temporary CPOA Executive Director shall serve in that capacity only for a period not to exceed six months.

Section 2. Prolonged or Temporary Absence of CPOA Executive Director.

In the event of prolonged, temporary absence of the CPOA Executive Director or during a period after CPOA Executive Director has ended contractual obligations with the City and a temporary appointment has not yet been completed, the following procedures will be used to process Citizen Police Complaints (CPCs).

- A. All Citizen Police Complaints will be assigned to the investigators in the Civilian Police Oversight Agency Administrative Office until the Chair of the Police Oversight Board or his/her Board Member designee determines that the investigators workload is too large and some complaints should be assigned to outside independent investigators.
- B. The Civilian Police Oversight Agency Administrative Office investigators will continue recommending findings on allegations of violations of Standard Operating Procedures.

Section 3. Selection of the CPOA Executive Director

Qualifications for the position of CPOA Executive Director shall minimally include the requirement of a law degree and experience in criminal investigations.

- A. The CPOA Executive Director will be a full-time contractual City employee to be selected as follows:
 - (a) The POB, through CPOA staff, shall accept applications from candidates. The POB shall review the applications and interview candidates, and submit to the City Council a ranked list of the three candidates that it finds to be the best qualified to be the CPOA Executive Director and the City Council shall appoint the CPOA Executive Director from the three by majority vote. The POB's recommendation to Council shall be based on the candidates' integrity, capability for strong management and abilities in investigations, law, management analysis, public administration, criminal justice administration or other closely related fields.
 - (b) In lieu of recommending three candidates to the Council, the POB may recommend to the Council the reconfirmation of the incumbent CPOA Executive Director.
 - (c) Should the Council decline to reconfirm the incumbent CPOA Executive Director, the Council President shall notify the POB that it needs to provide the Council with three alternate candidates.
 - (d) Should the CPOA Executive Director not be reconfirmed, the current CPOA Executive Director may continue to serve in the same capacity until a new CPOA Executive Director is selected and approved by the City Council. If for any reason there is a period of time during which there is no CPOA Executive Director, the City Council may appoint a temporary CPOA Executive Director of its choosing by a majority vote. A temporary CPOA Executive Director shall serve in that capacity only for a period not to exceed six months.
 - (e) The term of the CPOA Executive Director shall be for three (3) years. Once confirmed, the CPOA Executive Director may be removed only upon: 1) a

recommendation of removal to the City Council by the affirmative vote of two-thirds (2/3) of the members of the POB; and 2) acceptance of the POB's recommendation by a simple majority vote of the City. (Revised 4/9/15 Ordinance 9-4-1-7)

- B. The POB shall annually review the performance of the CPOA Executive Director taking into consideration the obligations and duties prescribed by the Police Oversight Ordinance and the performance of the CPOA Administrative Office.

HISTORY: On November 8, 2012, the POB deleted former Article II, Sections 3(H) and 3(1), of the Police Oversight Board Rules and Regulations 2009, which stated: 3(H). Complaints in which the IRO and Chief of Police disagree or non-concur will be reviewed by the Long Term Planning Committee. Their recommendations will be addressed by the Police Oversight Board; and 3(1). The IRO's findings of police shootings will be reviewed by the LTTPC and presented to the POB at the next regular meeting.

On December 13, 2012, the POB deleted former Article III, Section 5(F), which stated: If the Chief and the IRO disagree on the findings of any citizen police complaint or police shooting, the LTTPC will review the findings and make recommendations to the POB. All proposed recommendations will be presented to the POB for its consideration at the next regular meeting.

On September 18, 2014, the City Council amended the Police Oversight Ordinance. The April 9, 2015 Rule Amendments are intended to reflect those amendments in the Police Oversight process regarding appeals, Board Member appointments, and right to counsel. On November 24, 2014, the City and the Department of Justice entered into a Settlement Agreement with terms which mandated actions by the CPOA. The Settlement Agreement's requirements were also reflected in the April 5, 2015 amendments.