

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT BOARD

Thursday, November 8, 2018 – 5:00 PM
Vincent E. Griego Chambers, Basement Level
City/County Government Center – One Civic Plaza NW
Albuquerque, New Mexico

Members Present:

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

Members Absent:

None

Others Present

Edward Harness, CPOA
Katrina Sigala, CPOA
Julian Moya, City Council
Tina Gooch, Atty
Cdr. Michael Miller, APD
Cdr. Robert Middleton, APD
Esteban Aguilar, City Atty
James Lewis, Mayor's Office
Rowan Wymark, CPC

Meeting Minutes

PO Box 1293 I. **Welcome and call to order.** Chair Waites called to order the regular meeting of the Police Oversight Board at 5:02 p.m.

II. **Pledge of Allegiance.** Chair Waites led the meeting in the Pledge of Allegiance.

Albuquerque III. **Mission Statement.** Chair Waites read the Police Board's mission statement.

IV. **Approval of the Agenda.**

NM 87103 a) **Motion.** A motion was made by Vice-Chair Galloway to accept the agenda with change of the typo on CPC 228-17 it should read 228-18 on item X - Consent Agenda. Member Van Deventer second the motion. The motion was carried by the following vote:

www.cabq.gov

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

V. **Public Comments**

1. Tony Pirard
2. Tadeusz Niemyjski
3. Rachel Smith
4. Maggie Keil
5. Alice Lin McCoy
6. Celinda Griedo

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

a) Approval of the Minutes from October 11, 2018

1. Copies of the draft minutes from the October 11, 2018 POB meeting were distributed to each member in their packets.

2. **Motion.** A motion was made by Member Kass to approve the minutes as written. Member Fine second the motion. The motion was carried by the following vote:

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

VII. Reports from City Staff

a) APD – Commander Michael Miller with Internal Affairs gave the following report for APD:

1. **Statistical Data.** Commander Miller read the Statistical Data for the month of October 2018. A document titled *Police Oversight Board, APD Internal Affairs: Statistical Data for the Month of October 2018* was distributed to the POB members. (see attached)

2. **Use of Force Policies 2-56 and 2-57.**

3. Member Kass gave an update on the timeline for the Use of Force 2-56 and 2-57.

4. Commander Middleton presented the Use of Force 2-56 and 2-57 to the Police Oversight Board and answered the board's questions or concerns.

5. **SOP 1-3.** SOP 1-3 Grooming Standards was provided to the board. Commander Middleton is asking for input from the public on how they feel toward tattoos and visual facial hair on uniform APD Officers. Discussion will take place at next POB meeting.

b) City Council-

1. **City Council Representative.** – Julian Moya spoke on the upcoming November 19th's City Council Meeting OC18-8 the reconfirmation of Director Harness will be on the agenda and the November 26, 2018 Finance and Government Operations Committee meeting the Police Oversight Ordinance amendments will be on the agenda as well. City Council is also aware of the vacancies for POB members.

c) Mayor's Office-

1. **Mayor's Office Representative.** - James Lewis presented his report.

- d) **City Attorney-**
 - 1. **City Atty.** – Esteban Aguilar presented his report.
- e) **Community Policing Council**
 - 1. Rowan Wymark presented her report for the North Valley CPC.
- f) **Albuquerque Police Officer’s Association**
 - 1. There was no one from APOA present to give a report.
- g) **Civilian Police Oversight Agency**
 - 1. **Report on Lt. G’s Investigation.** Director Harness reviewed the investigative file and recommended that he found no preferential treatment for Lt. G and that no policies were violated or crimes committed.
 - 2. **IMR-8.** The board received a copy of IMR-8. Director Harness went over the concerns the monitor had with CPOA/POB.

VIII. Reports from Subcommittees

- a) **Community Outreach Subcommittee – Chantal Galloway-**
 - 1. Next meeting November 27, 2018 at 1:00pm
- b) **Policy and Procedure Review Subcommittee – William Kass–**
 - 1. Met November 1, 2018 at 1:00pm
 - 2. **ISR Contract with APD.** Policy and Procedure discussed and decided that the contract with ISR will be a conflict of interest with APD.
Motion. Motion by Member Fine that POB goes with committee’s assessment that ISR contract with APD will be a conflict of interest if we shared research staff between APD and CPOA/POB. Member St. John second the motion. The motion was carried by the following vote:
For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer
- c) **Case Review Subcommittee – Valerie St. John –**
 - 1. Met October 30, 2018 at 3:00pm
 - 2. Next meeting November 27, 2018 at 2:30pm
- d) **Personnel Subcommittee – Joanne Fine-**
 - 1. Met October 30, 2018 at 10:00am
 - 2. Next meeting November 13, 2018 at 10:00am

IX. Discussion

- a) **Police Oversight Boards Policy and Procedure.**
 - 1. **Motion.** Member Van Deventer made a motion to finalize the Police Oversight Boards Policy and Procedures with the changes that were discussed at October’s POB meeting and implement the updated version. Vice-Chair Galloway seconded the motion. The motion was carried by the following vote:
For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer

b) Officer D Overtime issue & audit.

1. **Motion.** Motion by Member Van Deventer to request a copy of the completed audit from the city and CPOA review and report back to POB if a data analysis is needed and make a recommendation on. Second by Vice-Chair Galloway. The motion failed. The motion was carried by the following vote:

For: 3 – Galloway, Kass, Van Deventer

Against: 3 – Waites, Fine, St. John

c) New hires Damon Martinez, Leonard Nebretski and Elizabeth Armijo.

1. The board discussed the process of new hires for APD and Chair Waites wanted to place on the next POB agenda for further discussion.

d) POB Unfilled positions.

1. Vice-Chair Galloway referenced 9-4-1-5 Police Oversight Board Ordinance for clarification and stated that there are over 70 candidates that have applied for a position on the POB and board vacancies have been since January 2018.

e) Update on APD Academy testing.

1. ISR and Dr. Garrett are researching on how to establish a baseline on standardizing testing takes place in other areas and other jurisdictions to determine if any improprieties with the testing at the APD Academy for the last 5 years.

f) PPRB – POB recommendations.

1. **Motion.** Motion by Vice-Chair Galloway that the designated member of PPRB will vote on policies presented in accordance with the stated position of the board. Member Fine second the motion. The motion was carried by the following vote:

For: 5 – Waites, Galloway, Fine, St. John, Van Deventer

Against: 1 - Kass

g) Dinner breaks. No discussion was made on dinner breaks.

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

Closed Discussion and Possible Action re: Pending Litigation or Personnel Issues

a) Matters subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant pursuant to NMSA 1978. Section 10-15-1(H)(7);

i. Intervention into pending federal litigation

b) Limited personnel matters pursuant to NMSA 1978; Section 10-15-1(H)(2)

i.Executive Director’s contract

- a) **Motion.** Motion by Member Van Deventer to take a member by member vote to move into a closed session for the limited purpose of discussing a personnel matter. Vice-Chair Galloway seconded the motion. The motion was carried by the following vote:
- b) **Roll call vote by board members.**
For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer

---- Meeting on Personnel issues began at 7:26 p.m. and
the meeting reconvened at 8:49 p.m. ---

- a) Member Fine stated that the only discussion in closed session were on the listed agenda items.
- b) **Motion.** Member Fine motioned to reconvene the special meeting into regular session. Vice-Chair Galloway seconded the motion. The motion was carried by the following vote:
Roll call vote by board members.
For: 6 – Waites, Galloway, St. John, Kass, Van Deventer

XI. Consent Agenda Cases: The CPOA’s findings in each case listed on the consent agenda are reviewed and approved by the POB. The findings become part of the officer’s file, if applicable. Copies of the full findings letters to the citizens are located at <http://www.cabq.gov/cpoa/findings-letters/civilian-complaints-pob-findings>.

a) Administratively Closed Cases

151-18	175-18	205-18	206-18	207-18
211-18	221-18	224-18	227-18	228-18
240-18	242-18	243-18	245-18	250-18
251-18				

- 1. **Motion.** Member Van Deventer motioned to approve the Administratively Closed cases presented. Member Fine seconded the motion and there was no discussion of any cases. The motion was carried by the following vote:
For: 6 - Waites, Galloway, Fine, St. John, Kass, Van Deventer

XII. Non-Consent Agenda.

a) Administratively Closed Cases

238-18 246-18 228-17

b) Unfounded / Sustained

132-18

c) Exonerated/Sustained not based on original complaint

128-18

d) Not Sustained investigation by IA

144-18

1. Motion. Motion by Member Fine to defer all Non- Consent Cases to November 27, 2018 CRC Meeting for discussion. Second by Member Van Deventer. The motion was carried by the following vote:

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

XIII. Non-Concurrence Cases.

a) There was no Non-Concurrence Cases to present

XIV. Review of Appeals

a) 053-18

1. Motion. Motion made by Member Van Deventer to grant the appeal for the complainant in CPC 053-18 on December 13, 2018 POB meeting. Second by Member Fine. The motion was carried by the following vote:

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

XV. Serious Use of Force/Officer Involved Shooting Cases.

a) C45-2018

1. Motion. Motion made by Chair Waites to defer C45-2018 to next month's POB agenda for review of the Garrity Materials. Second by Vice-Chair Galloway. The motion was carried by the following vote:

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

XVI. POB's Review of Garrity Materials.

a) There was no Garrity Materials to present

XVII. Other Business.

a) Member Fine wanted to remind everyone of the Town Hall Meeting on November 10, 2018 from 2:00-4:00pm at the Convention Center and November 19, 2018 City Council Meeting at 5:00pm in the Vincent E. Griego Chambers on Director Harness's contract.

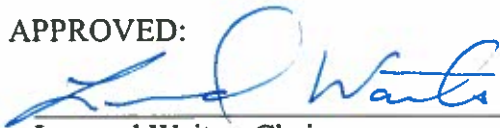
b) Vice-Chair Galloway requested if Director Harness can provide a copy of budget items regarding Executive Directors contract.

- c) Chair Waites requested that the CPOA website be updated with the following information: IMR 6-8, CPOA reports past 2016 and Director Harness listed as the custodian of record.

XVIII. Adjournment – A motion was made by Member Kass to adjourn the meeting. Vice-Chair Galloway second the motion. The motion was carried by the following vote:
For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer
The meeting adjourned at 9:15pm

Next Regularly scheduled POB meeting will be on January 11, 2019 at 5:00 p.m. in the Vincent E. Griego Chambers.

APPROVED:



Leonard Waites, Chair
Civilian Police Oversight Agency

12/13/18
Date

CC: Julian Moya, City Council Staff
Katy Duhigg, City Clerk
Ken Sanchez, City Council President (via email)

Minutes drafted and submitted by:
Katrina Sigala, Senior Administrative Assistant

Attachments

POLICE OVERSIGHT BOARD

PUBLIC COMMENT SIGN IN

DATE: 11/8/2018

NAME (PLEASE PRINT)

1. Tony Pirard

13. _____

2. Tad Naminjski

14. _____

3. Rachel Smith

15. _____

4. Maggie Keil

16. _____

5. Alice Liu McGay

17. _____

6. ~~Fax~~

18. _____

7. Celina Gregis

19. _____

8. _____

20. _____

9. _____

21. _____

10. _____

22. _____

11. _____

23. _____

12. _____

24. _____

POLICE OVERSIGHT BOARD
INTERNAL AFFAIRS
STATISTICAL DATA FOR THE MONTH OF OCTOBER 2018

APD 911 Communications Center

Dispatched calls for Service for OCTOBER 2018: 41,928 (decrease from SEPTEMBER (1,042))

INTERNAL CASES FOR THE MONTH OF OCTOBER 2018

I's

Total Internal Cases Completed the Month of OCTOBER: 8

Comprised of:

- **6-Internal Affairs Investigations**
- **2-Area Command Investigated case**

Internal Cases Administratively Closed: 0

Internal Cases Mediated: 0

Discipline imposed for Internal Cases OCTOBER 2018

1: Counseling
1: Training
1: Verbal Reprimand
8: Letter of Reprimand
2: Suspension = 8 hours
1: Suspension = 16 hours
2: Suspension = 20 hours
3: Suspension = 40 hours
1: Suspension = 168 hours

EIRS FOR OCTOBER 2018: 23 alerts distributed

Pending IA Cases for the Month of OCTOBER 2018: 14

IA/IAC Cases opened in the month of OCTOBER 2018: 3



2-56 Use of Force—Reporting by Department Personnel

2-56-1 Purpose

The purpose of this policy is to describe the responsibilities of all Department personnel to report use of force, whether an officer is witness to a use of force or involved in a use of force, so that reviewers and investigators can determine whether such force was reasonable, necessary under the circumstances, and proportional to the threat or resistance of the individual.

2-56-2 Policy

Officers shall immediately notify a supervisor and document any use of force in order to facilitate the review and investigation of such incidents.

Officers witnessing or learning about use of force by another officer shall completely, thoroughly, and accurately report such incidents to the appropriate supervisor.

2-56-3 Classification of Use of Force by Department Personnel

The Department utilizes a force classification system that takes into consideration the likelihood and degree of pain or injury to the individual which determines the appropriate review or investigation by a supervisor in the officer's chain of command or an investigator with the Force Investigation Section (FIS).

A. Level 1 Use of Force: Force that is likely to cause only transitory pain, disorientation and/or discomfort during its application as a means of gaining compliance.

1. This includes techniques, which are not reasonably expected to cause injury, do not result in an actual injury, and are not likely to result in a complaint of injury (i.e., pain compliance techniques and resisted handcuffing).
2. Pointing a firearm, beanbag shotgun, or 40 millimeter launcher at an individual, or using an electronic control weapon (ECW) to "paint" an individual with the laser sight or arcing, as a show of force are reportable as a Level 1 Use of Force.
3. Level 1 Use of Force does not include interaction meant to guide, assist, or control an individual who is offering minimal resistance.

B. Level 2 Use of Force: Force that causes an injury, could reasonably be expected to cause injury, or results in a complaint of an injury.

1. Level 2 Use of Force includes:



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- a. Use of an ECW, including where an ECW is fired at an individual but misses;
- b. Use of a beanbag shotgun or 40 millimeter launcher, including where it is fired at an individual but misses;
- c. OC Spray application;
- d. Empty Hand Techniques (e.g. strikes, kicks, takedowns, distraction techniques, or leg sweeps); and
- e. Strikes and attempted strikes with impact weapons, except for strikes to the head, neck, or throat, which would be considered a Level 3 use of force.

C. Level 3 Use of Force: Force that results in, or could reasonably result in, serious physical injury, hospitalization, or death.

1. Level 3 use of force includes:

- a. Use of deadly force;
- b. Critical firearm discharges;
- c. Use of force resulting in death or serious physical injury;
- d. Use of force resulting in hospitalization;
- e. All strikes to the head, neck, or throat with a hard object;
- f. Use of force resulting in a loss of consciousness;
- g. Canine bites;
- h. Three or more applications of an ECW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers;
- i. ECW application on an individual during a single interaction for longer than 15 seconds, whether continuous or consecutive, regardless of the mode of application;
- j. Neck holds;
- k. Four or more strikes with a baton; and
- l. Any Level 2 use of force against a handcuffed individual.

2-56-4 Use of Force Reporting Procedures

A. General Requirements of Officers Who Use Force

1. All officers, regardless of rank, shall immediately notify their on-duty supervisor following any use of force, prisoner injury, allegation of any use of force, or show of force.



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Officers shall immediately report use of force to their chain of command when involved in off-duty enforcement action.

2. Officers are not required to notify their chain of command when they use low-level control tactics (SOP 2-53 Use of Force—Definitions).
3. Officers who witness or are involved in a use of force or show of force shall notify another field supervisor when their immediate, on-duty supervisor is unavailable.
4. Officers shall remain on the scene of a use of force or show of force incident until relieved by a supervisor.
5. Officers who learn of an unreported use of force by another officer shall immediately report the incident to their on-duty supervisor.
6. All officers shall activate on-body recording devices and record all on-duty use of force incidents in accordance with Department SOP 2-8 "Mandatory Recording Incidents". Officers who do not record use of force incidents shall be subject to discipline, up to and including termination.

If the immediate activation of an OBRD is not feasible due to immediate risk to the safety of the Department personnel or others, then the Department personnel shall activate the OBRD when it is safe to do so.

7. A supervisor who was involved in a reportable use of force, including by participating in or ordering the incident giving rise to the use of force, shall not be involved in reviewing the incident.
 - a. "Participating" is defined as physically assisting in overcoming an individual's resistance.
8. Where an officer is unable to write an initial report due to physical injury or being involved in an officer involved shooting, or as the victim of a crime, then the on-duty supervisor will assign another officer to document the incident.

2-56-5 Officer Responsibilities Following Use of Force Incident

A. Duty to Provide Medical Attention and Transportation

1. Following a use of force, and once it is safe to do so, officers shall:
 - a. Determine whether any person was injured by the use of force;
 - b. Immediately render aid consistent with the officer's training;
 - c. Immediately request medical attention when an individual is injured or complains of injury following a use of force;



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- d. Immediately request medical attention for the following use of force tools or techniques regardless of visible injury or complaint of injury:
 - i. Baton (Expandable or Straight)/Bokken;
 - ii. Oleoresin Capsicum (OC) spray;
 - iii. ECW;
 - iv. Use of patrol canine;
 - v. Use of force with a vehicle (see Department Standard Operating Procedure 2-45 – Pursuit by Motor Vehicle);
 - vi. Impact Munitions;
 - vii. Firearm; or
 - viii. Strikes to the head, neck or throat with a hard object.

2. If officers are unable to secure the scene, officers may safely extract the individual and transport them to a safe location for medical treatment, if necessary.
3. Officers shall closely monitor individuals who are taken into custody if the individuals are injured, exhibit physical distress, complain of pain, or have been rendered unconscious.
4. Personnel transporting an individual to a medical facility for treatment shall take the safest and most direct route to the medical facility. (Refer to SOP 2-82-3)
5. Where an officer transports an individual to a medical facility the officer shall notify communications of the starting and ending mileage of the transporting vehicle.

B. Video of Use of Force Incident

1. Officers involved in a use of force shall not leave the scene without providing the responding supervisor access to their on-body recording device to review footage of the incident.
2. Officers witnessing a use of force shall provide the responding supervisor access to their on-body recording device to review footage of the incident upon request.

C. Officer's Obligations Following Level 1 Use of Force

1. All officers shall provide a written or recorded use of force narrative of the facts leading to the use of force or show of force by the end of the shift to the supervisor conducting the review or APD officer conducting the investigation. Any officer shall have the right to call for a representative.

The narrative shall include:

- a. A detailed account of the incident from the officer's perspective;
- b. The reason for the initial police presence;



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- c. A specific description of the acts that led to the use of force, including the individual's behavior;
- d. The level of resistance from the individual; and
- e. A description of each type of force used and justification for each use of force.

Supervisors are responsible for initiating BlueTeam entries before the end of a shift during which the use of force occurred. Where an officer provides a written narrative of the use of force they shall do so in the BlueTeam administrative system.

2. Officers shall describe with specificity the actions taken by the officer and the individual in the use of force narrative form. Officers shall not use boilerplate, canned or conclusory language (e.g., "guided to the ground", "offered resistance") when providing a narrative of a use of force incident.

D. Officer's Obligations Following Level 2 or 3 Use of Force

1. Officers found to have used Level 2 or 3 force shall remain on-scene until contacted by an investigator with the Force Investigation Section.

E. Special Operations Division or Emergency Response Team Procedure Following Use of Chemical Munitions and Noise Flash Diversionary Devices (see also Department SOP 6-8-12(C) Specialized Tactical Units)

1. When deployed, noise flash diversionary device (NFDD) and chemical munitions are considered a use of force. As such, their use will be documented and submitted to the chain of command for review. The documentation should consist of a description of the reasons for deployment, the method of deployment, the effects of the deployment, a description of any injuries or property damage resulting from the deployment, and an assessment of the outcomes of the deployment.
2. The deployment of the below listed chemical munitions will be considered a use of force because it is likely to cause only momentary discomfort during application and will be utilized by personnel as a means of gaining compliance:
 - a. CS Tri-Chamber;
 - b. CS Triple Chaser;
 - c. CS Hand Ball;
 - d. OC Vapor Aerosol;
 - e. Ferret 40mm Powder Barricade Round, OC; or
 - f. Ferret 40mm Powder Barricade Round, CS
3. When NFDD or chemical munitions are deployed, an SOD supervisor will investigate the use of force as indicated below as a Level 1 unless it is determined to be a Level 2 or Level 3:



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- a. Respond to the scene, if not already on scene, and immediately identify the officer(s) involved in the use of force;
- b. Review the involved officer(s) lapel video;
- c. Review the lapel video of other officers on-scene where there is uncertainty about whether the incident is a use of force;
- d. Examine personnel and individual(s) for injuries;
- e. Gather any evidence located at the scene;
- f. Ensure photographs of the officer(s) and the individual(s) are taken; and
- g. Initiate a Blue Team entry for the use of force.

When an NFDD is used as a means to gain the attention of an individual it will not be considered a use of force if an intermediate barrier exists between the individual and the NFDD. When the sound is subdued and the light is absent from the individual the effect is an exterior noise used to gain the attention of a barricaded individual. This method of deployment is a means of notification of police presence to the individual. Their use will still be documented in the tactical deployment sheet and after action report. An NFDD will only be deployed by trained tactical personnel upon authorization from a Tactical Supervisor.



2-57 Use of Force—Review and Investigation by Department Personnel

2-57-1 Purpose

It is the policy of the Department to objectively and thoroughly review every use of force and show of force by officers to reach a finding, supported by a preponderance of the evidence, concerning whether the officer used the minimum amount of force that was reasonable, necessary, and proportional based on the totality of the circumstances to bring about a lawful objective.

The Department categorizes force based on the level of force used and the risk of injury or actual injury from the use of force. The category of force—Level 1, 2, or 3—determines the kind of review or investigation that will be undertaken.

The Department's goal in categorizing force is to promote efficiency and reduce the burden on first-line supervisors, while optimizing critical investigative resources on higher-level uses of force.

2-57-2 Policy

Supervisors and Force Investigation Section (FIS) detectives shall conduct timely, thorough, and accurate reviews and investigations of use of force by Department personnel.

Supervisors and detectives reviewing and investigating use of force shall determine whether the officer used the minimum amount of force that was reasonable, necessary and proportional, based on the totality of the circumstances confronting an officer acting to bring about a lawful objective. These reviews and investigations into use of force shall also determine whether the application of de-escalation techniques were feasible.

Supervisors and detectives reviewing use of force shall objectively weigh all evidence collected from an incident to reach a reliable finding based upon a preponderance of the evidence.

Supervisors and detectives reviewing use of force shall take into consideration the minimum legal requirements as set forth in the United States Supreme Court decision in *Graham v. Connor*, 490 U.S. 386 (1989) which established the objectively reasonable perspective of an officer involved in a use of force.

Any review or investigation of use of force shall also take into consideration that officers must at all times comply with the minimum legal requirements and the even stricter standards as set forth in Department policy. Supervisors and investigators analyzing force incidents will consider only the facts that the officers should have reasonably known at the time the officers used force in evaluating whether the force was in policy.



The review and investigation into use of force will consider an officer's perspective and that the decision to use force is sometimes made in tense, uncertain, and rapidly evolving situations.

2-57-3 Use of Force Review by Supervisors and the Chain of Command

A. General Requirements

1. A supervisor who was involved in a Reportable Use of force or show of force, including by participating in or ordering the use of force being reviewed, shall not be involved in reviewing the incident.

"Participating" is defined as physically assisting in overcoming an individual's resistance.

2. Personnel will classify use of force according to the highest level of force used during an incident.

For example, where an officer uses Level 1 and Level 2 force during an incident it will be investigated as a Level 2 use of force by an FIS detective.

3. For Level 2 and Level 3 uses of force, the supervisor shall ensure that FIS is immediately notified and dispatched to the scene of the investigation to initiate the force investigation.

B. Supervisory Responsibilities for Classifying Force

1. The supervisor of an officer using force shall immediately respond to the scene to ensure that the use of force is appropriately classified based upon the Department's three-level force classification system.

a. **Level 1 Use of Force:** Force that is likely to cause only transitory pain, disorientation and/or discomfort during its application as a means of gaining compliance.

- i. This includes techniques, which are not reasonably expected to cause injury, do not result in an actual injury, and are not likely to result in a complaint of injury (i.e., pain compliance techniques and resisted handcuffing).
- ii. Pointing a firearm, beanbag shotgun, or 40 millimeter launcher at an individual, or using an ECW to "paint" an individual with the laser sight or arcing, as a show of force are reportable as a Level 1 use of force.
- iii. Level 1 use of force does not include interaction meant to guide, assist, or control an individual who is offering minimal resistance.



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b. **Level 2 Use of Force:** Force that causes an injury, could reasonably be expected to cause injury, or results in a complaint of an injury.

i. Level 2 Use of force includes:

- Use of an ECW, including where an ECW is fired at an individual but misses;
- Use of a beanbag shotgun or 40 millimeter launcher, including where it is fired at an individual but misses;
- OC Spray application;
- Empty Hand Techniques (e.g. strikes, kicks, takedowns, distraction techniques, or leg sweeps); and
- Strikes and attempted strikes with impact weapons, except for strikes to the head, neck, or throat, which would be considered a Level 3 use of force.

c. **Level 3 Use of Force:** Force that results in, or could reasonably result in, serious physical injury, hospitalization, or death.

i. Level 3 use of force includes:

- Use of deadly force;
- Critical firearm discharges;
- Use of force resulting in death or serious physical injury;
- Use of force resulting in hospitalization;
- All strikes to the head, neck, or throat with a hard object;
- Use of force resulting in a loss of consciousness;
- Canine bites;
- Three or more applications of an ECW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers;
- ECW application on an individual during a single interaction for longer than 15 seconds, whether continuous or consecutive, regardless of the mode of application;
- Neck holds;
- Four or more strikes with a baton; and
- Any Level 2 use of force against a handcuffed individual.

C. **On-Scene Responsibilities of Supervisors Reviewing Use of Force (Refer to On-Scene Response Handbook)**

1. The supervisor of an officer using force shall perform the following duties at the scene of a use of force:

- a. Examine personnel and the individual for injuries and request medical attention, where appropriate;



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- b. Identify the involved and witness officers to the use of force;
 - c. Review the involved officer's lapel video to determine whether the incident involves a Level 1 use of force;
 - d. Review the lapel video of other officers where uncertainty remains about whether the incident rises to a Level 2 or Level 3 use of force;
 - e. Gather any evidence located at the scene of a Level 1 use of force;
 - f. Capture photographs of the officer(s) and the individual involved in Level 1 use of force;
 - g. Require submission of a use of force statement from the involved officer by the end of the shift; and
 - h. Conduct any other necessary fact-gathering activities to reach reliable conclusions, including obtaining a statement from the detained individual after providing them with a *Miranda* warning, regarding the officer's use of Level 1 force.
2. Where a supervisor determines that the use of force by an officer involves a Level 2 or Level 3 use of force, they shall immediately contact FIS to conduct the investigation.

D. Supervisor Documentation of Level 1 Use of Force

1. Supervisors shall generate a BlueTeam entry for the use of force without regard to the number of involved or witness officers.
2. The investigating supervisor shall ensure involved and witness officer on-body recording device footage, and any other video of the use of force, is attached to the corresponding BlueTeam entry.
3. Supervisors shall complete and document a supervisory force review of a Level 1 use of force within seventy-two (72) hours after the use of force occurs.
 - a. Where a supervisor is unable to complete the review within the initial seventy-two (72) hour deadline the supervisor may seek a seven-day extension by submitting a memorandum to the involved officer's commander.
 - b. The lieutenant in the involved officer's chain of command will have ten calendar days to complete the review of a Level 1 use of force.
 - c. The commander in the involved officer's chain of command will have ten calendar days to complete the review of a Level 1 use of force.
4. The supervisory review of all Level 1 use of force shall include:
 - a. All written or recorded use of force narratives or statements provided by personnel or others;
 - b. A list of evidence that was gathered, including sufficient identifying information of civilian witnesses (names, phone numbers and addresses) to the use of



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force. The supervisor shall specifically note if there were no witnesses to the use of force. The supervisor shall also explain why witness information was not gathered in circumstances where there were witnesses to the use of force that were not documented;

- c. The report should also include all available identifying information for anyone who refuses to provide a statement;
 - d. The names of all other Department employees witnessing the use of force;
 - e. A narrative evaluating the use of force, based on the supervisor's analysis of the evidence gathered, including a determination whether the officer's actions complied with Department policy and state and federal law;
 - f. An assessment of the incident for tactical and training implications, including whether the need to use force could have been reduced or eliminated through the use of de-escalation techniques; and
 - g. Documentation from the supervisor of any tactical issues found during the review which shall be included as part of the BlueTeam entry; and
 - h. Documentation that the supervisor completed an administrative investigation into any policy violations found during the review.
5. The supervisor shall forward a level 1 use of force review through the involved officer's chain of command once it has been completed. The commander of the involved officer shall assess the BlueTeam entry to ensure that it is complete and that the findings are supported by a preponderance of the evidence.
- a. Where two or more officers are involved in a Level 1 use of force, such reviews will be forwarded through the investigating supervisor's chain of command.
6. Each time a supervisor conducts a deficient force review it will be documented in work performance records by their immediate supervisor.

A supervisor repeatedly conducting deficient force reviews shall receive the appropriate corrective and/or disciplinary action, including training, demotion and/or removal from a supervisory position.

E. Chain of Command Review of Level 1 Use of Force

1. The involved officer's chain of command shall order additional review when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings.



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2. Where the findings of a supervisory review are not supported by a preponderance of the evidence, the involved officer's Commander shall document the reasons for such determination in their review.

The supervisor's commander shall take appropriate action to address the inadequately supported determination and any deficiencies that led to it.

3. The chain of command shall suspend a level 1 use of force review and immediately notify IAFD and the Chief of Police upon the discovery of apparent criminal conduct in the use of force by an officer with notice to the affected officer.

Upon this notification, IAFD shall immediately initiate an administrative and criminal investigation into the use of force.

4. When the chain of command discovers that a use of force is more appropriately categorized as a Level 2 or Level 3 then FIS shall immediately be notified to conduct the investigation with notice to the affected officer.

5. When misconduct is discovered during a level 1 use of force review then an administrative investigation shall be initiated by either the supervisor or the Internal Affairs Misconduct Division.

F. Performance Review Unit (PRU) Audit of Level 1 Use of Force Reviews

1. Upon receipt of a Level 1 use of force review from a commander, the PRU shall conduct a review to ensure that it is complete and that the findings are supported by the evidence.
2. After completing its review, the PRU shall ensure that the file is forwarded to IAFD for recordkeeping.
3. Where the PRU determines that a level 1 use of force review is deficient, it will be sent back to the originating supervisor for correction.
4. Deficiencies noted by the PRU detective in Level 1 use of force shall be forwarded to the affected commander by the Deputy Chief of the Compliance Bureau to assure entry of the findings into the work performance records of the chain of command.

G. Chief of Police Authority to Re-assign Reviews and Resolve Level 1 Use of Force Policy Violations

1. The Chief of Police may assign or re-assign a Level 1 use of force review with notice to the affected officer.



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2. The Chief of Police may return a Level 1 use of force to the original supervisor for further analysis.
3. The Chief of Police shall explain any assignment or re-assignment of a Level 1 use of force review in writing.
4. Where a level 1 use of force by an officer could have violated Department policy the Chief of Police shall:
 - a. Refer the matter to the chain of command to conduct an administrative investigation into the potential policy violation; or
 - b. Refer the matter to the Internal Affairs Misconduct Division to conduct an administrative investigation into the alleged misconduct.
5. The Chief of Police shall ensure that policy, training, or equipment concerns noted during a Level 1 use of force review are resolved through the referral of such issues to the appropriate Departmental division for corrective action.
6. Once a commander finds that a level 1 use of force review finding by a supervisor is supported by a preponderance of the evidence, the file shall be forwarded to the PRU.
7. The quality of supervisory force investigations shall be taken into account in the performance evaluations of the officers performing such reviews.

2-57-4 Level 2 and Level 3 Use of Force Investigations by the Force Investigation Section

A. General Requirements

1. FIS shall respond to the scene and conduct investigations of level 2 and level 3 uses of force.
2. FIS shall also conduct administrative investigations into uses of force indicating apparent criminal conduct by an officer with notice to the affected officer.
3. FIS shall conduct the use of force investigation where the involved officer is any rank higher than sergeant.
4. FIS shall conduct the use of force investigation upon reassignment by the Chief of Police.
5. Where a level 2 or level 3 use of force investigation indicates apparent criminal conduct by an officer in the use of force, IAFD shall refer the use of force to an investigator from the Criminal Investigations Division (CID) supporting FIS, with no



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involvement in the initial administrative investigation into the force, to conduct a criminal investigation with notice to the affected officer.

The criminal investigation shall remain separate from and independent of the administrative investigation into the use of force.

6. In instances where the Multi-Agency Task Force (MATF) is conducting the criminal investigation of a use of Force, the IAFD shall conduct the administrative investigation.

B. Level 2 and 3 Use of Force Investigations by the Force Investigation Section

1. In conducting its investigations of Level 2 or Level 3 uses of force, FIS detective shall:
 - a. Respond to the scene and consult with the on-scene supervisor to ensure that all personnel and individual(s) of use of force have been examined for injuries, that the use of force has been classified according to APD's classification procedures, that individual(s) have been interviewed for complaints of pain after advising the individual(s) of his or her rights, and that all officers and/or individual(s) have received medical attention, where necessary;
 - b. Ensure that all evidence to establish material facts related to the use of force, including but not limited to, audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
 - c. Canvass for, and interview witness(es). In addition, witnesses shall be encouraged to provide and sign a written statement in their own words;
 - d. Ensure that all officers witnessing a level 2 or level 3 use of force provide a use of force narrative of the facts leading to the use of force;
 - e. Provide a written admonishment to involved and witness officer(s) to the use of force that they are not to speak about the force incident until they are interviewed by the investigator of the FIS;
 - f. Conduct only one-on-one interviews with involved and witness officers;
 - g. Review all use of force reports to ensure that these statements include information required by Department policy;
 - h. Ensure that all use of force reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when the incident occurred;
 - i. Conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask



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officers or other witnesses any questions that may suggest legal justifications for officers' conduct;

- j. Record all interviews;
 - k. Consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible; and
 - l. Make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force described by the officer and any injuries to personnel or subjects.
2. An investigator with the FIS shall complete an initial use of force data report for all level 3 use of force incidents and submit it through the chain of command to the Chief of Police as soon as possible, but in no circumstances later than twenty-four (24) hours after the use of force.
 3. An investigator with the FIS shall complete level 2 or level 3 administrative investigations within two months after learning of the use of force. Any request for an extension to this time limit must be approved by the Commander of IAFD through consultation with the chief of police.
- C. Level 2 and 3 Use of Force Investigation Reports by the Force Investigation Section
1. At the conclusion of each use of force investigation, the FIS shall prepare an investigative report. The report shall include:
 - a. A narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the FIS independent review of the facts and circumstances of the incident;
 - b. Documentation of all evidence that was gathered, including names, phone numbers, addresses of witnesses to the incident, and all underlying use of force data reports. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of those witnesses, the report shall state the reasons why such information was not recorded. The report shall also include all available identifying information for anyone who refuses to provide a statement;
 - c. The names of all other officers or employees witnessing the use of force;
 - d. The investigator's narrative evaluating the use of force, based on the evidence gathered, including a determination of whether the officer's actions complied with Department policy and state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force



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could have been avoided through the use of de-escalation techniques or lesser force options;

- e. If a weapon was used by an officer, documentation that the officer's certification and training for the weapon were current at the time of the incident; and
- f. The complete disciplinary history of the officers involved in the use of force.

D. Level 2 and 3 Use of Force Investigation Review by the Force Investigation Section Chain of Command

1. Upon completion of the FIS investigation report, the FIS investigator shall forward the report through his or her chain of command to the IAFD Commander.
2. The IAFD Commander shall review the report to ensure that it is complete and that, for administrative investigations, the findings are based upon the preponderance of the evidence.
3. The IAFD Commander shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.
4. For administrative investigations, where the findings of the FIS investigation are not supported by a preponderance of the evidence, the IAFD Commander shall document the reasons for this determination and shall include this documentation as an addendum to the original investigative report.
5. The IAFD Commander shall take appropriate action to address any inadequately supported determination and any investigative deficiencies that led to it.
6. The IAFD Commander shall be responsible for the accuracy and completeness of investigation reports prepared by the FIS.
7. Where a member of the FIS repeatedly conducts deficient force investigations, the member shall receive the appropriate corrective and/or disciplinary action, including training or removal from the FIS in accordance with performance evaluation procedures.
8. When the IAFD Commander determines that the force investigation is complete and the finding is supported by a preponderance of the evidence, the commanding officer shall forward the investigation report to the Force Review Board with copy to the Chief of Police.

E. Chief of Police Authority to Re-assign Reviews and Resolution of Level 1 Use of Force Policy Violations



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1. At the discretion of the Chief of Police, a force investigation may be assigned or re-assigned for investigation to the MATF or the Federal Bureau of Investigations (FBI), or may be returned to the FIS for further investigation or analysis. This assignment or re-assignment shall be documented in writing with notice to the affected officer.
 2. After an administrative force investigation, where a use of force is found to violate policy, the Chief of Police shall direct and ensure appropriate discipline and/or corrective action.
 3. Where a force investigation indicates apparent criminal conduct by an officer, the Chief shall ensure that a CID detective or the MATF consults with the Bernalillo County District Attorney's Office (BCDA) or the United States Attorneys' Office (USAO) as appropriate.
 4. In use of force investigations, where the incident indicates policy, training, tactical, or equipment concerns, the Chief of Police shall ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.
- F. Role of the Multi-Agency Task Force in the Review of Level 2 or Level 3 Use of Force for Potential Criminal Conduct
1. Where appropriate to ensure the fact and appearance of impartiality with the authorization of the Chief of Police, APD may refer a use of force indicating apparent criminal conduct by an officer to the MATF for criminal investigation with notice to the affected officer.
 2. To ensure that criminal and administrative investigations remain separate, APD's Violent Crimes Section may support the FIS of IAFD, or the MATF in the investigation of any level 2 or level 3 use of force, including critical firearm discharges, in-custody deaths, or police initiated actions in which a death or serious physical injury occurs.
 3. The Chief of Police shall instruct that any completed criminal investigation into a use of force, performed by the MATF, shall be forwarded to the appropriate prosecuting authority.
 4. Where APD refers a use of force incident to the appropriate prosecuting authority for potential criminal prosecution, the FIS will delay any compelled interview of the target officer(s). No other part of the administrative investigation shall be held in abeyance unless specifically authorized by the Chief of Police, and after consultation with the prosecuting agency.



1-3 GROOMING STANDARDS

1-3-1 Purpose

The purpose of this policy is to provide the grooming standards that shall be adhered to by all department personnel.

1-3-2 Policy

Department policy establishes that all employees meet appropriate grooming standards as prescribed by the Chief of Police. All employees, while on duty, unless otherwise directed by their commanding officer, shall be well groomed and clean. Clothes and shoes shall be clean and properly cared for. Attire shall conform to department rules and regulations. All department personnel are expected to dress appropriately for the work place. The Chief of Police reserves the right to determine the appropriate standard for personnel in a particular assignment.

1-3-3 Procedures

7 A. Grooming and Attire – All Department Personnel

1. Personal Hygiene

- a. Employees are expected to be attentive to personal hygiene including, but not limited to, regular personal bathing, shampooing and oral hygiene.

2. Attire

- a. Clothing is to be neat and clean, without rips, tears or holes and appropriate for the work environment. Employees should not wear suggestive or provocative attire, halter tops, non-uniform shorts, flip flops, T-shirts and other similar items of casual attire, nor should attire be unusually tight fitting, short, or low-cut.

3. Hair

- a. Hair should be clean, combed and neatly trimmed or arranged. Unkempt hair is not permissible regardless of length. Hair coloring must be natural hair tone colors. Lopsided and extremely asymmetrical styles are not authorized. Hairstyles that do not allow for the proper wear of headgear are prohibited.
- b. Wigs or hairpieces shall be of good quality and fit, present a natural appearance and conform to the grooming standards set forth in this section.



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4. Fingernails

a. Males

Fingernails shall be kept clean and well groomed. Colored nail polish will not be worn while on duty.

b. Females

Length of fingernails shall not exceed a reasonable length for the duties required of the individual employee. Nail polish may be worn, but colors shall be conservative and complement the skin tone. Dangling fingernail rings or decorative adornments are not permitted.

5. Jewelry

Conservative jewelry is authorized for all personnel and shall be in good taste while on duty. Earrings are allowed only on female employees. Earrings shall not exceed two per ear lobe and shall be small and inconspicuous. Additional piercing of the ear lobes and cartilage are prohibited.

6. Body Piercing

No articles, other than earrings for females specified above, shall be attached to or through the ear, nose, tongue, chin, eyebrow or any other body part that would be visible to the public while on duty.

7. Body Mutilation

Mutilation is defined as the intentional radical alteration of the body, head, face or skin for the purpose of and or resulting in an abnormal appearance. Visible, intentional mutilation of any part of the body is prohibited.

8. Dental Ornamentation

a. The use of decorative veneers or caps for purposes of dental ornamentation is prohibited. Teeth, whether natural, capped, or veneered, will not be ornamented with designs, jewels, initials, etc.

9. Cosmetics

a. Cosmetics may be applied so that colors blend with natural skin tone, enhance natural features and do not give a dramatic appearance.



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- b. An employee's chain of command has the authority to have the employee change or remove cosmetics determined to be in violation of this section.

10. Eyeglasses

- a. Personnel shall wear prescription glasses that are conservative in design.
- b. Sunglasses should be removed when addressing the public.

B. Male Personnel

1. Hair

- a. When in uniform, males shall wear their hair in compliance with the following:
 - i. Hair on the side may extend to the ears but will not protrude over the ears. Hair at the nape of the neck may be rounded or blocked but it shall not touch or extend beyond the top of the collar when the head is held in the position of attention. Hair in front will not fall below the eyebrows. Hairstyles that do not allow for the proper wear of headgear are prohibited.
 - ii. Sideburns shall not extend in length below the bottom of the ear. The sideburns shall be neatly trimmed, not bushed nor flared. Sideburns shall be cut level when the head is held in the position of attention. The width of the sideburns shall not be more than 1-1/4 inch.
 - iii. Mustaches will be neatly trimmed and shall not extend in length below the top edge of the upper lip nor extend more than 1/4 inch upward, downward, or to the side from the corner of the mouth.
 - iv. No facial hair other than a mustache is authorized. The Chief of Police will consider and may approve accommodations to this standard only in cases where the officer or cadet demonstrates a medical or religious need for accommodation. In such instances, the officer or cadet should bring the need for accommodation to the Chief of Police's attention through the chain of command. The officer or cadet must provide sufficient documentation and proof for the need for the accommodation.
 - v. An officer's facial hair shall be trimmed or shaved so as not to interfere with the proper seal of the department issued gas mask. Specialized and collateral units required to wear respirators shall be in compliance with **Use of Respirators SOP**.
 - vi. Designs will not be allowed to be cut/shaved into short hairstyles.

2. Jewelry



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- a. Earrings are prohibited.
 - b. Necklaces shall not be visible.
 - c. Male sworn officers may wear a wristwatch, wedding band or other conservative type ring.
3. Employees excused from the above regulations because of special assignment shall be in compliance with the above regulations when wearing the official uniform.

C. Female Personnel

1. Hair

- a. When in uniform, females shall wear their hair in compliance with the following:
 - i. Hair may be cut short.
 - ii. Longer hair will be secured and styled.
 - iii. Hair shall not be styled so that it hangs below the eyebrows.
 - iv. Hair will be neat and clean.
 - v. Pigtails or dreadlocks are not permitted.
 - vi. Hairstyles that do not allow for the proper wear of headgear are prohibited.

2. Jewelry

- a. Female sworn officers may wear a wristwatch, wedding band or other conservative type ring.
- b. Necklaces shall not be visible.

D. Tattoos and Body Art Standards

1. All personnel - Tattoos are permissible to be shown in public, while in the duty uniform, on the following areas:
 - a. Arms.
 - b. Hands.
 - c. Legs.
2. Tattoos that are deemed offensive will be covered while in the duty uniform.
 - a. Examples of offensive tattoos include, but are not limited to:
 - i. Depictions of intolerance or discrimination against any race, religion, gender, or national origin.
 - ii. Sexually explicit, sexist; or vulgar art, words, phrases, or profane language.



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- iii. Initials, acronyms, or numbers that represent criminal or historically oppressive organizations (any street gang names, numbers, and/or symbols).
 - iv. Anything that depicts or endorses violence.
 - b. Tattoos or body art above the collar of the duty uniform are prohibited from being visible at all times. These areas include:
 - i. Neck,
 - ii. Head,
 - iii. Face,
 - iv. Ears.
3. Prior to displaying tattoos, personnel will be required to declare, through the Tattoo Declaration Form, any tattoos, which will be visible while in a duty uniform, to their respective first line supervisor before the employee can display their tattoos in public. The declaration process is as follows:
 - a. The employee that wishes to have their tattoos visible while in the duty uniform will notify their chain of command with a Tattoo Declaration Form.
 - b. The first line supervisor will send the Tattoo Declaration Form through their chain of command to their Commander.
 - c. The Commander will verify if the tattoos are offensive and will approve/deny the employees request to have their tattoos visible to the public, while in the duty uniform.
 - d. A Tattoo Declaration Form must be submitted for each new tattoo the employee receives that will be visible while in the duty uniform.
 - e. All Tattoo Declaration Forms will be uploaded by the Commander into IA Pro.
4. Any tattoos deemed offensive will be documented through the Tattoo Declaration Form which will be uploaded to IA Pro by the Commander.
5. Commander and above will submit a memo request with photos for any visible tattoos to their direct supervisor.
 - a. A record of the memo(s) and photograph(s) of the tattoos will be placed in the Commander (and above) employee file. This file will be transferred with the employee upon relocation.
6. Employees with tattoos/branding located above the uniform collar, in an area not practical to cover, or which have been deemed offensive may submit a request to their Deputy Chief of Police or designee for consideration. If the Deputy Chief



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deems a tattoo to be offensive the employee will be required to keep that tattoo covered at all times.

7. All tattoos are prohibited from being visible in the Class A uniform.
8. Tattoos that substitute for the application of cosmetics are acceptable, provided the make-up is applied in shades appropriate to natural skin tones.

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E. Exceptions

1. The Chief of Police will make the final decision of whether body art or a tattoo violates this policy, if a determination has to be made.
2. Transgender employees will adhere to the policy based on their gender identity not their sex assigned at birth.

Civilian Police Oversight Agency Policies and Procedures

ARTICLE I -- PURPOSE

1. Recognizing that a properly conceived and functioning police oversight system is necessary to promote accountability of police officers and protect the rights of citizens, the City Council adopted the Police Oversight Ordinance, § 9-4-1-1 to 9-4-1-14.
2. Through the Police Oversight Ordinance, the City Council created the Civilian Police Oversight Agency ("CPOA") as an independent agency of City Government, not part of either the City Administration or City Council. The CPOA is overseen by the Police Oversight Board ("POB") and operates through an Administrative Office. The Executive Director of the CPOA leads the Administrative Office and reports to the POB.
3. These policies and procedures set forth the structure of the POB and CPOA and the manner in which they will operate. The policies and procedures may be supplemented by office policies the POB may approve related to internal operations of the Administrative Office.

ARTICLE II -- MEETINGS

1. **Regular Meetings.** The POB will hold regular monthly meetings, which it currently schedules at 5:00 p.m. on the second Thursday of every month in the Vincent E. Griego Chambers, Albuquerque/Bernalillo County Government Center.
2. **Special Meetings.** Special meetings may be called by the Chairperson or a majority of the members upon three days notice. On the petition of 1,000 or more civilians in the City of Albuquerque, the POB also shall hold a special meeting for the purpose of responding to the petition, and hearing and inquiring into matters identified therein as the petitioners' concern.
3. **Emergency Meetings.** Notwithstanding any provision contained in these policies and procedures, the Chairperson 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. "Emergency" for the purpose of this section 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 and/or the CPOA specifically. Within ten days of taking action on an emergency matter, the POB shall report to the New Mexico Attorney General's Office the action taken and the circumstances creating the emergency, unless a state or national emergency has been declared.
4. **Open Meetings.** Except as may otherwise be provided in the Constitution of the State of New Mexico or the Open Meetings Act, all meetings of a quorum of members of the POB held for the purpose of formulating public policy, discussing public business or taking any

action within the POB's authority or the delegated authority of the POB, are to be public meetings open to the public at all times. Each year, the Chairperson of the POB shall introduce, and the POB shall adopt, a resolution establishing procedures to provide reasonable notice of POB meetings to the public. Meetings will be conducted with a prepared, timely posted agenda, and, except for emergency matters, the POB shall take action only on items included in the agenda. Regularly scheduled meetings will be televised live on the appropriate government access channel, if it is operating. Special meetings shall be videotaped and aired on the appropriate government access channel.

5. **Quorum.** A majority of the appointed and approved members of the POB serving at any time shall constitute a quorum thereof.

6. **Public Comment and Addressing Meetings.**

A. The POB will provide an opportunity for public comment at the beginning of each meeting and for each agenda item during a meeting. Public comment shall be limited to three minutes, unless extended by the Chairperson.

B. When an individual civilian police complaint is on the agenda for the POB to review, the complainant or complainant's authorized representative will be provided with a minimum of five minutes to address the POB relating to the complaint and investigation.

C. Public comment must be directed to the POB through the Chairperson or presiding Board member, not at staff members or members of the audience.

D. The POB may invite representatives of the City, other government bodies, or the public to speak on matters relevant to the POB's work.

E. Items displayed during an individual's public comment must be removed at the end of that person's public comment.

F. No signs, props, posters, or banners will be allowed in the meeting chambers other than those that are 8½" x 11" or smaller. Such material shall not be held or waived in a manner that blocks the view of others or creates a distraction from the speaker or the business at hand.

7. **Records.** The Executive Director of the CPOA shall serve as the records custodian for the Civilian Police Oversight Agency and its Police Oversight Board, unless the Executive Director designates another full-time employee to serve as the records custodian during the course of that employee's employment with the CPOA. If the Executive Director designates another full-time employee as the records custodian, the Executive Director shall ensure that: 1) the information necessary to make an Inspection of Public Records Act (IPRA), including the name and contact information of the present records custodian appears plainly on the CPOA website; and 2) internal policies are in place so that any IPRA requests sent to the Executive Director or staff person of the CPOA, or any member of the POB, be directed to the records custodian and the person making the IPRA request be informed.

8. **Attendance.** Board members shall attend all meetings of the POB unless excused by the Chairperson.

9. **Disturbing Meetings.** It shall be unlawful to disturb any meeting of the POB or any of its subcommittees, or to behave in a disorderly manner at any such meeting. There will be no tolerance for disruptive public outbursts or disruptions that impede the orderly progress of a meeting. The Chairperson or presiding Board member will provide one warning to anyone who causes a disruption. Upon a second or continued disruption, the Chairperson or presiding Board member will ask that person to leave the Chambers, and, if necessary, will ask that security escort that person out of the Chambers. Such removal from the Council Chambers or Committee Room will be effective for the remainder of that meeting. If continued disruptions occur, the Chairperson or presiding Board member may recess the meeting until order is restored, and, if necessary, may clear the Chambers or Committee Room of persons participating in the disturbance.

ARTICLE III -- ORGANIZATION OF THE POLICE OVERSIGHT BOARD

1. **Election of Chairperson and Vice-Chairperson.** The POB shall elect one of its members as the Chairperson and one as the Vice-Chairperson. No officer shall be eligible to immediately succeed himself or herself in the same office. The POB shall select the Chairperson and Vice-Chairperson at the first meeting in the month of March of each calendar year or upon vacancy of an office to fill the remaining term. The Chairperson and Vice-Chairperson shall serve at the pleasure of the POB until their successor(s) have been selected.

2. **Powers and Duties of the Chairperson and Vice-Chairperson.**

A. The Chairperson shall:

- (1) Call the POB to order and, upon a quorum being present, proceed to business;
- (2) Preserve order and decorum and, during POB meetings, have general direction of the Vincent E. Griego Chambers or any location where the meeting is held;
- (3) Have the responsibility for preparation of the agenda and dissemination of the agenda with the public notice for the meeting;
- (4) Decide all questions of order, subject to a Board member's right to appeal to the POB as a whole;
- (5) Have the right to speak, as other Board members, on general questions from his or her chair;

- (6) Vote upon all questions in the same manner as other Board members;
- (7) Announce the result promptly on the completion of every vote;
- (8) Appoint all subcommittees, subject to the approval of the POB;
- (9) Sign all resolutions, letters, and official documents on behalf of the POB;
- (10) Receive all formal messages and communications from the Mayor, City Council, and others;
- (11) Hold over or refer to the appropriate subcommittee any issue of interest to the POB;
- (12) Have the authority to sign all agreements for professional/technical services entered into by the POB to facilitate its functions pursuant to applicable procurement statutes and requirements.

B. In the absence of the Chairperson, upon the Chairperson's inability to act, or upon request of the Chairperson, the Vice-Chairperson shall preside and shall have all the powers and authority of the Chairperson.

3. **Subcommittees.**

A. The POB may create such subcommittees as it deems necessary or desirable in performing authorized functions provided that, membership on such subcommittees shall be limited to POB members. Subcommittees shall consist of any number of Board members fewer than a quorum.

B. Subcommittees only shall conduct business when a quorum of the subcommittee is present. A Board member may designate an alternate Board member to attend a subcommittee meeting when the Board member regularly assigned to the subcommittee is unable to attend. A majority of the members of the POB assigned to a subcommittee and designated alternates shall constitute a quorum of a subcommittee.

C. The subcommittee shall elect a Chairperson who shall vote on all matters before the subcommittee in the same manner as other members of the subcommittee. The Chairperson also may make or second motions.

D. At each regular POB meeting following a subcommittee meeting, the subcommittee Chairperson shall give an oral report from the subcommittee meeting. The regular meeting minutes shall contain a summary of the subcommittee report.

E. The POB Chairperson may request that subcommittee reports be submitted in

writing and provided to the full POB. If written reports are submitted, reports of the minority of the subcommittee may be also included.

F. Subcommittees shall report on all matters referred to them without unnecessary delay. If a subcommittee refuses or neglects to report on any matter referred to it, the Chairperson may take the matter from the subcommittee.

G. A subcommittee may be designated to review civilian police complaints and related matters. Any subcommittee designated responsibility for reviewing civilian police complaints may recommend that specific complaint cases be placed as a consent agenda item for a POB meeting. At such meeting, any Board member may request that a complaint case on the consent agenda be removed and placed instead on the non-consent agenda.

H. The Open Meetings Act typically does not apply to subcommittees, subcommittees endeavor to act within the spirit of the Open Meetings Act and as such will, at minimum, post their agendas with 72 hours of notice, allow each member of the public a minimum of three minutes of public comment, and will record minutes of each meeting for posting. Subcommittees will comply with the Open Meetings Act in all instances where the Open Meetings Act applies.

4. **Conflicts of Interest.** A Board member shall withdraw from any proceeding in which he or she has a direct or indirect conflict of interest, or does not believe he or she can provide a fair and impartial hearing. 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.

5. **Removal of Members.** Any POB member may be removed for cause by a two-thirds vote of either the POB or the City Council. The appointment of any POB member who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the POB reports such absence to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists requiring an appointment for the length of the unexpired term.

6. **Orientation and Training.** Upon appointment, POB members shall complete an orientation and training consisting of the following:

A. Required Orientation: Prior to participating in any POB meetings, newly appointed members must first:

- (1) Be trained by the CPOA staff or CPOA legal counsel on CPOA and Albuquerque Police Department (“APD”) rules, policies, and procedures; and
- (2) Attend at least one POB meeting as an observer.

B. Required Training. Each POB member shall complete a training program within the first six months of the member's appointment that consists, at a minimum, of the following:

- (1) Completion of the APD Civilian Police Academy. For purposes of this training requirement, APD may offer an abbreviated, two-day weekend Civilian Police Academy available only to POB members.
- (2) Civil rights training, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable use of force.
- (3) At least two APD ride-alongs.
- (4) Annual firearms simulation training.
- (5) Internal Affairs training.
- (6) Training provided to APD officers on use of force, including a review and familiarization with all APD policies related to use of force, and including policies related to APD's internal review of force incidents.
- (7) Equity and Cultural Sensitivity training.
- (8) Training on the 2014 Department of Justice ("DOJ") Settlement Agreement with the City of Albuquerque (or any subsequent agreements), and Findings Letter of April 10, 2014 (or any subsequent findings letters).
- (9) Training on the Police Oversight Ordinance.
- (10) Training on state and local laws regarding public meetings and the conduct of public officials.
- (11) A briefing that identifies and explains the curriculum of all training received or to be received by APD officers, including any outside training not provided by the City.

C. Required On-Going Training. POB members shall receive eight hours of annual training on any changes in law, policy, or training, as well as developments in the

implementation of the 2014 DOJ Settlement Agreement (or any subsequent agreements) until such time as the terms of the agreement are satisfied.

D. POB members shall participate in at least two police ride-alongs for every six months of service on the POB.

E. CPOA investigators shall receive at least 40 hours of initial training in conducting misconduct investigations within the latter of one year of the operational date of the DOJ Settlement Agreement or one year of hire. CPOA investigators also shall receive at least eight hours of training each year thereafter. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations.

7. **CPOA Staff.** CPOA employees shall staff, coordinate, and provide technical support for all scheduled POB meetings, publicize all findings and reports, recommendations, and/or suggested policy changes. The POB also may consult with CPOA staff for relevant information that will aid the POB in its work.

8. **Executive Director**

A. Selection and removal of the Executive Director shall be governed by the Police Oversight Ordinance.

B. In the event of the prolonged absence of the Executive Director, or during a period after the Executive Director has ended contractual obligations with the City and a temporary appointment has not yet been completed, complaints will be assigned to CPOA investigators subject to the Chairperson's direction, including with regard to determining any need for outside independent investigators. In such circumstances, CPOA investigators shall continue preparing proposed findings and recommendations for civilian complaints. The Chairperson may designate an acting Executive Director for purposes of presenting civilian complaints to the POB during any such period of time.

C. 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.

D. The POB shall provide its annual review of the Executive Director to the City Council upon completion.

9. **Independent 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 the Police Oversight Ordinance and the CPOA's duties, responsibilities, and procedures except for CPOA personnel matters, which shall remain under the authority of the City Attorney's Office.

10. **Indemnification of CPOA Staff and POB.** The City shall hold harmless, indemnify, and defend the Executive Director, CPOA staff, and POB members when liability is sought for conduct allegedly committed within the scope of the relevant individual's duties, responsibilities, and service to the CPOA. This shall include providing the impacted individual with legal representation including, where appropriate, outside counsel.

ARTICLE IV- PROCEDURES

1. **Definitions.**

A. "Use of Force" is defined by the DOJ Settlement Agreement—as may be amended from time to time and APD's standard operating procedure 2-53.

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

3. **Amendment of Rules.** These rules, or any part thereof, may be amended, repealed, altered or rescinded by a vote of a majority of all POB members.

4. **Suspension of Rules.** These rules, or any part thereof, may be temporarily suspended by a vote of two-thirds of the Board members present. The following shall apply if fewer than nine Board members are present:

<u>Board Members Present</u>	<u>2/3 Vote</u>
8	6
7	5
6	4
5	4
4	3

When the suspension of a rule is requested and no objection is offered, the Chairperson shall announce the rule suspended, and the POB may proceed accordingly.

4. **Time Computation.** In computing any period of time prescribed or allowed by these rules or the Police Oversight Ordinance, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Unless otherwise specified, any period prescribed or allowed by these rules that is longer than (10) days shall be calculated as calendar days. If the last day of any designated period is a Saturday, Sunday, or legal holiday, the period will end on the next business day.

5. **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) Hearings on Requests for Reconsideration
- (6) Findings by POB
- (7) Reports from Sub-Committees
- (8) Reports from CPOA or City staff, including the CPOA Executive Director, Independent Counsel, Mayor, City Council, City Attorney, and Albuquerque Police Department.
- (9) Other Business

B. The Chairperson shall have the discretion to proceed out of order to any order of business or return to any prior order of business.

6. **Motions.** No motions shall be entertained or debated until announced by the Chairperson, and every motion shall be seconded prior to debate.

7. **Debate.**

A. Any Board member wishing to speak, debate, make a motion, submit a report, or conduct other business shall address the Chairperson and shall not proceed further until recognized by the Chairperson.

B. If two or more Board members seek recognition at the same time, the Chairperson 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 ten 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 Chairperson with the consent of the Board member.

8. **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 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 Chairperson 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 Chairperson. The Board member appealing the Chairperson's decision will speak and the Chairperson 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.

G. A Board member may be permitted to explain his or her vote, but only after the roll call has been completed and the result has been announced.

9. **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.

10. **Early Departure.** Any Board member leaving a POB meeting early shall make the Chairperson aware of such departure as early as possible, so that allowances in scheduling business can be made. Any Board member leaving a subcommittee meeting when the departure will cause a loss of quorum shall make every effort to secure an alternate Board member to sit on the subcommittee.

**ARTICLE V -- INVESTIGATION AND REVIEW OF CIVILIAN COMPLAINTS,
SERIOUS USES OF FORCE, AND OFFICER INVOLVED SHOOTINGS**

1. Civilian Complaints.

A. Any person claiming to be aggrieved by the actions of the APD may file a complaint against the department or any of its officers or employees. Anonymous and third-party complaints shall be accepted, and there is no time limitation on when a complaint may be filed with the CPOA.

B. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. Any Spanish-speaking individual with limited English proficiency who wishes to file a complaint about APD personnel shall be provided with a complaint form in Spanish. Efforts will be made to accommodate other non-English speakers. All such complaints will be investigated in accordance with policies and procedures set forth herein and associated policies.

C. The CPOA will receive and process all civilian complaints directed against the APD and any of its officers or employees. The Executive Director shall independently investigate, or cause to be investigated, all civilian police complaints and prepare findings and recommendations for review by the POB. The Executive Director shall oversee, monitor and review all investigations and findings prepared for complaints assigned to staff or an outside investigator. For all investigations, the Executive Director shall make recommendations and give advice to the POB regarding APD policies and procedures as the Executive Director deems advisable.

D. All civilian complaints filed with other offices within the City authorized to accept civilian complaints, including the APD, shall be referred by the recipient to the Executive Director for investigation within three business days of receipt.

E. The Executive Director shall ensure that the investigation of all civilian complaints filed with the CPOA begin immediately after the complaints are filed and proceed as expeditiously as possible. The Executive Director shall be prepared to brief the POB on the status of any investigations that ~~were not, or~~ are not on track to be completed in sufficient time for the POB to make disciplinary recommendations in advance of the deadline for the Chief of Police ("Chief") to impose discipline.

F. The Executive Director shall ensure that investigations of civilian complaints are as thorough as necessary to reach reliable and complete findings, and are objective, fair, impartial, and free from political influence. In addition to other information and evidence the CPOA obtains through investigation, investigators shall review records provided by the City that reflect:

- (1) the complete disciplinary history of the officers involved in incidents under review;

- (2) where their inclusion will aid the investigation, documents, reports, and other materials for incidents related to those under review, such as incidents involving the same officer(s);
- (3) all APD policies and training; and
- (4) where their inclusion will aid the investigation, documents, reports, and other materials for incidents that may evince an overall trend in APD's use of force, internal accountability, policies, or training.

G. After the investigation of a civilian complaint is completed, the Executive Director shall analyze all relevant and material circumstances, facts and evidence that investigators gathered during the investigation related to the issues raised in the complaint and potential collateral violations of APD policies and procedures, or criminal law. The Executive Director shall then prepare investigation reports with proposed findings and recommendations for each investigation, and submit them to the POB for its review and consideration. In cases in which clear evidence suggests misconduct involved a different officer, a second investigation should be opened relating to the second officer's actions.

H. The Executive Director shall explicitly identify and recommend to the POB one of the following dispositions for each allegation of misconduct in a civilian complaint:

- (1) "Unfounded," where the investigation determines, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject APD Employee;
- (2) "Sustained," where the investigation determines, by a preponderance of the evidence, the alleged misconduct did occur;
- (3) "Not Sustained," where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred;
- (4) "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training;
- (5) "Sustained violation not based on original complaint," where the investigation determines, by a preponderance of the evidence, that misconduct did occur that was not alleged in the original complaint but that was discovered during the misconduct investigation; or
- (6) "Administratively closed," where the policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of the lack of information in the complaint. Administrative closing of a complaint investigation shall be used only 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. Administratively closed complaints may be re-opened if additional information becomes available. In such cases, the deadlines for investigation and review set forth above shall run from when the complaint is re-opened.

I. The burden of proof is not imposed on any party to a civilian complaint but instead rests with the investigating agency.

J. All investigations of civilian complaints shall be completed within 90 days of initiation of the complaint investigation. The 90-day period shall not include time for review. An extension of the investigation of up to 30 days may be granted, but only if the request for an extension is in writing and is approved by the Chief. To the extent permitted by state and city law, extensions may also be granted in extenuating circumstances, such as military deployments, hospitalizations of the officer, and extended absences. The Chief has 30 days from completion of the investigation to impose discipline. Investigations shall be submitted to the POB with sufficient time for Board members to determine the appropriate disposition and submit any recommendation related to discipline to the Chief for consideration before the deadline for imposing discipline expires. The POB may make findings and recommendations on complaints that are not resolved within these timelines despite any limitations it may have on the purposes for which APD may use the POB's findings and recommendations.

K. If at any time during a misconduct complaint intake or investigation a CPOA investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the Internal Affairs Division commanding officer and transfer the investigation to the Internal Affairs Division.

L. The Executive Director, CPOA staff, and POB members may file complaints against APD personnel pursuant to the Police Oversight Ordinance in the same manner as any other citizen. Such complaints shall be addressed as follows:

- (1) Any Board member who is a complainant or witness for a civilian police complaint shall be recused from participating in any findings, votes, or recommendations concerning the complaint.
- (2) Where a member of the CPOA staff is a complainant or witness for a civilian police complaint, the Executive Director shall retain an independent outside investigator to investigate the complaint. Absent a conflict of interest that precludes forming a quorum, the POB will process and decide the complaint in the same manner it decides other civilian complaints. If there is a conflict of interest that precludes forming a quorum, the POB will refer the investigative file to the Chief for his consideration of possible discipline.
- (3) If the Executive Director is a complainant or witness for a civilian police

complaint, or if the Executive Director otherwise determines that a conflict precludes the Executive Director from participating in the investigation and presentation of a civilian police complaint to the POB, an independent investigator shall perform the functions of the Executive Director for purposes of that complaint.

2. **Serious Uses of Force and Officer Involved Shootings.**

A. The Executive Director shall receive all APD reports of serious uses of force and officer involved shootings. The Executive Director shall timely review these materials and assign them for investigation or review by the investigative staff.

B. The Executive Director will oversee, monitor, and review all investigations or reviews of serious uses of force and officer-involved shootings, and make findings for each. All findings will be made available to the public on the CPOA website as soon as practicable.

C. Before taking action related to a serious use of force or officer involved shooting, the Executive Director shall confer with the relevant prosecuting agency and/or federal law enforcement agency to assess the likelihood of an officer being criminally prosecuted based on the incident. The Executive Director may delay or decline to proceed with any action related to a serious use of force or officer involved shooting until completion of the criminal investigation unless, after consultation with the prosecuting agency, the Executive Director determines that proceeding is appropriate and will not compromise a criminal investigation. If the Executive Director seeks to proceed with investigating or presenting to the POB a serious use of force or officer involved shooting despite a prosecuting agency or federal law enforcement agency indicating that doing so would interfere with a criminal investigation, the Executive Director only may proceed after obtaining approval to do so through a 2/3 vote of the POB.

3. **Investigation Protocol.**

A. CPOA investigators only shall advise APD personnel of their Fifth Amendment rights where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee.

B. In each investigation the CPOA conducts, the Executive Director and assigned investigator shall consider all relevant evidence, including circumstantial, direct, and physical evidence.

- (1) There will be no automatic preference for an APD officer or APD Employee's statement over a non-officer's statement, nor will the Executive Director or investigator disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history or any concern regarding mental illness.
- (2) During its investigation, the CPOA shall take into account any convictions for crimes of dishonesty of a civilian complainant or

any witness, but only as relevant to credibility.

- (3) The CPOA shall take into account the record of any involved officers who have been determined to have been deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation. The investigator shall, at a minimum, obtain from Internal Affairs all information related to such prior determinations for any officer whose credibility is at issue in any investigation.

C. Any findings and recommendations the Executive Director prepares shall indicate whether within the past year there were any IA investigations or supervisor generated complaints against the officer(s) involved in the incident being investigated or that are otherwise relevant to the subject matter of the investigation, the general nature of the prior investigations or complaints, and whether they resulted in any discipline.

D. In addition to determining whether APD personnel engaged in misconduct, investigations shall assess and document whether the action(s) under review were in compliance with training and legal standards, and whether the incident suggests the need for a change in policy, procedure, or training.

4. **Access to APD Documents and Subpoenas.**

A. The City shall provide reasonable access to APD premises, files, documents, reports, and other materials for inspection by POB members, CPOA investigative staff, and the Executive Director upon reasonable notice.

B. The POB may issue subpoenas on its own initiative. When the POB issues a subpoena, a showing of relevance is not required and an appeal need not be pending.

C. The subpoena shall be issued by the City Clerk's Office and signed by the Chair or his/her designee.

D. Any applicable witness and travel fees and costs associated with service of process shall be paid by the CPOA.

5. **POB Review.**

A. The POB shall review the proposed findings and recommendations the Executive Director prepares, and shall by majority vote of members present:

- (1) Approve the findings and recommendations as proposed;
- (2) Approve other findings and recommendations as the POB determines are supported by the investigation file;

- (3) Defer action on the matter to allow for further investigation or analysis by the Executive Director.
- (4) Return the findings and recommendations to the CPOA for editing, proofreading, or other requested improvements to the draft.
- (5) Findings and recommendations returned to the CPOA pursuant to these subsections herein shall be returned to the POB for a final review again pursuant to the subsections contained herein

B. The full investigation file shall be available to the POB for its review subject to the limitations on access and confidentiality set forth in Article VII below.

C. In reviewing completed investigations, the POB shall assess and document whether:

- (1) the incident suggests that APD should revise strategies and tactics;
- (2) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures;
- (3) the incident suggests revisions to policy or procedures.

D. For civilian complaints, the Executive Director shall prepare and submit a public record letter to the civilian complainant, with a copy to the Chief, that outlines the findings and recommendations the POB approved. The Executive Director shall transmit that letter the next business day following the meeting during which the POB took action on the complaint.

E. Unless the civilian complainant requests a hearing, within 30 days of receipt of the decision of the POB, the Chief shall notify the POB and the original civilian complainant of his or her final disciplinary decision related to the complaint in writing, by certified mail.

F. The Executive Director may share any disciplinary recommendations with the Chief in advance of submitting those recommendations to the POB only as necessary to help ensure timeliness pursuant to any applicable personnel or union contract requirements.

6. **Requests for Reconsideration.**

A. Any person who has filed a civilian complaint and who is dissatisfied with the findings and/or recommendations the POB approved may request reconsideration by the POB within thirty (30) calendar days (inclusive of weekends and holidays) of receipt of the public record letter.

B. The POB may grant a request for reconsideration only upon a showing by the

complainant that:

- (1) a policy was misapplied in the evaluation of the complaint;
- (2) the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion; or
- (3) the findings and recommendations were not consistent with the record evidence.

C. The POB shall notify the Chief 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. The Executive Director shall ensure notice is provided to the complainant at least one week prior to a hearing on the request for reconsideration.

E. Reconsideration hearings shall be included in the POB agenda.

F. Complainants may submit a written request to delay a hearing on a request for reconsideration for up to two months. Failure to appear at a scheduled hearing or to request a delay in writing may result in the POB acting on the request for reconsideration without further input from the complainant.

G. Time for hearings on a request for reconsideration shall be divided as follows:

- (1) 15 minutes for the complainant or representative
- (2) 5 minutes for the police officer, if present
- (3) 10 minutes for APD
- (4) 10 minutes for the CPOA Executive Director or designee
- (5) 5 minutes for the complainant or representative

The POB may combine separate appeals of the same action, in which case each appeal will receive an equal share of the complainant's time. The Chairperson shall indicate in advance the division of time. The parties shall decide on the speakers to use the time.

H. New evidence may be accepted by the POB during the hearing on a request for reconsideration. Whether to accept new evidence a party proffers is left to the discretion of the POB, and the POB may decide to rely on the evidence on the record. If the POB decides that additional evidence is necessary and appropriate for the proper disposition of the request for reconsideration, it may accept the evidence offered during the hearing or require the CPOA Executive Director to obtain such evidence for future presentation. New evidence which could

have been put in the record during previous investigations or hearings is not favored for introduction during a hearing on a request for reconsideration. New evidence that clarifies evidence already in the record may be allowed. New evidence offered to contradict evidence in the record may be allowed if such evidence appears convincing and is material to the proper disposition of a complaint.

I. Board members may ask questions at any time of any witness present. When a Board member asks questions, the time limits set forth above are stayed until questioning is completed.

J. With regard to any request for reconsideration that has been filed with and is pending before the POB:

- (1) No Board member shall communicate outside a hearing with the complainant or the complainant's representative.
- (2) No Board member shall knowingly communicate with a member of the public or an organization about the subject of the request for reconsideration. Information and correspondence that is not in the record at the time the request for reconsideration is submitted only may be considered in making a decision if it is accepted as new evidence as set forth above.
- (3) No Board member shall conduct their own investigations or add their own evidence to the record regarding any hearings on requests for reconsideration.
- (4) Any correspondence regarding the subject of a request for reconsideration 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.
- (5) 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.

K. Upon close of the hearing on a request for reconsideration, the POB may modify or change the findings and/or recommendations of the public record letter and may make further recommendations to the Chief regarding the findings and/or recommendations and any discipline the Chief has imposed or proposed. Decisions on requests for reconsideration shall be determined by a majority of the Board members present. If the vote ends in a tie, the original findings and recommendations remain in place.

L. Within twenty (20) days of receipt of the POB's decision, the Chief shall

notify the POB and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail.

7. **Appeals of Disciplinary Decisions to the Chief Administrative Officer.** If any person who has filed a civilian complaint is not satisfied with the Chief's final disciplinary decision or any matter relating to the Chief'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. The complainant must make such a request in writing within thirty (30) calendar days (inclusive of weekends and holidays) of receipt of the Chief's letter notifying the complainant of his or her final disciplinary decision related to the complaint. Upon completion of his or her review, the Chief Administrative Officer shall take any action necessary, including overriding the decision of the Chief regarding disciplinary action, to complete the disposition of the complaint. The Chief Administrative Officer shall notify in writing, by certified mail, the complainant, the individual against whom the complaint was filed, the Chief, and the Executive Director of the CPOA, the results of his or her review and any action taken.

8. **Maintenance of Documentation Regarding Findings.** The POB's final findings shall be placed with the Chief's findings and discipline imposed in the Internal Affairs Unit Discipline Status Sheet in the officer's Retention File, in IA Pro, and in any other electronic track system in which APD maintains records related to findings and discipline.

9. **Disciplinary Recommendations.**

A. The POB may, in its discretion, recommend officer discipline from the Chart of Sanctions for investigations that result in sustained civilian police complaints. The POB also may recommend discipline based on any findings that result from review of internal affairs investigations, including but not limited to officer involved shootings.

B. Imposing discipline the POB recommends is at the discretion of the Chief, but if the Chief does not follow the POB's disciplinary recommendation, the Chief shall respond in writing, within thirty (30) days, with the reason as to why the recommended discipline was not imposed.

10. **Audits.** The POB may, by majority vote, perform an annual audit, or direct that an audit be performed, on a random sample of up to 10% of individual civilian police complaint investigations involving allegations of use of force. In exceptional circumstances, for the purpose of promoting an enhanced measure of quality assurance in the most challenging cases, the POB may, by a vote of two-thirds of the members of the POB, perform an audit, or direct that an audit be performed, on any individual civilian police complaint investigation by the CPOA.

11. **Policy Recommendations.**

A. The Executive Director will provide quarterly reports updating the POB on the results of the CPOA's long-term planning process. Through the long-term planning process, the CPOA will identify major problems or trends, evaluate the efficacy of existing law enforcement

practices in dealing with the same, and establish a program of resulting policy suggestions and studies each year. The POB shall review and analyze policy suggestions, analysis, studies, and trend data the CPOA has collected or developed supplemented by such additional data and information it obtains directly or instructs the CPOA to collect.

B. By majority vote, the POB may recommend policies related to programs and procedures or other matters relating to APD.

C. The Chief must respond to any policy recommendations from the CPOA in writing within forty-five (45) days. The Chief's response must indicate whether the APD will follow the recommendations through standing operating procedures, whether the recommendations should be adopted as policy by the City Council, or whether the Department will not follow any of the policy recommendations and any reasons why they will not be followed.

D. The POB must dedicate a majority of its time to policy recommendations.

12. **Monitoring.**

A. The Executive Director shall monitor and periodically report to the POB on claims of excessive force. This shall include reporting to the POB on APD-related settlements in excess of \$25,000 at the regularly scheduled POB meeting following each such settlement.

B. The CPOA shall track allegations regarding misconduct involving individuals who are known to be homeless or have a mental illness, even if the complainant does not specifically label the misconduct as such.

C. The CPOA shall conduct an annual review of APD's policies against retaliation and the implementation of those policies. This review shall consider the alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and supervisors' performance in addressing and preventing retaliation. The CPOA shall coordinate this review with Internal Affairs, which is responsible for reviewing the same issues. Following such review, the City shall modify its policy and practice, as necessary, to protect individuals, including other APD personnel, from retaliation for reporting misconduct.

13. **Reporting.** The Executive Director shall submit to the POB draft semi-annual written reports for the POB's approval for submission to the Mayor and City Council. The reports shall include, but need not be limited to:

- A) Number and type of complaints received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
- B) Demographic category of complainants;

- C) Number and type of serious force incidents received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
- D) Number of officer-involved shootings received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
- E) Policy changes submitted by APD, including any dispositions by the Executive Director, the agency, and the Chief;
- F) Policy changes recommended by the agency, including any dispositions by the Chief;
- G) Public outreach efforts undertaken by the agency and/or Executive Director; and
- H) Trends or issues with APD's use of force, policies, or training.

ARTICLE VI -- BUDGET

1. **Budget.** CPOA staff shall present to the POB a budget at such a time as to provide the POB sufficient time to recommend and propose the CPOA budget to the Mayor and City Council during the City's annual budget process. The proposed budget shall provide for sufficient funding to carry out the powers and duties set forth in the Police Oversight Ordinance, including the funding for staff and all necessary operating expenses.

ARTICLE VII -- CONFIDENTIALITY AND ACCESS TO INVESTIGATION MATERIALS

1. **POB Hearings.**

A. The POB hearing process shall be open to the public to the extent legally possible so that it does not conflict with state or federal law.

B. The CPOA's attorney may designate details of investigations privileged or confidential when the law so requires.

C. Compelled statements given to the Executive Director or a designated independent investigator will not be made public.

D. The Executive Director may summarize conclusions reached from a compelled statement for the report to the POB and the Chief, and in the public record letter sent to the complainant.

E. Nothing in these policies and procedures or the Police Oversight Ordinance affects the APD's ability to use a compelled statement in a disciplinary proceeding.

2. **POB Access to Investigation Materials.**

The POB shall have reasonable access to the following documents and information:

A. Redacted personnel records for APD personnel, including those of the Internal Affairs Unit, shall be made available to the POB on demand.

B. Information that could be construed to be covered by *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967) will be made available to the POB on application submitted in writing pursuant to a majority vote of the POB. Where the POB votes to review such material, it shall do so only in a closed session to the extent permitted under the New Mexico Open Meetings Act.

C. The POB shall maintain the confidentiality of any *Garrity* material or records that are made confidential by law. The POB is subject to the same penalties as the custodian of those records for violating confidentiality requirements. In addition to any other penalty, any POB member or other person who violates his or her confidentiality obligations shall be removed from the POB and shall be subject to prosecution for a misdemeanor subject to the penalty provisions set forth in § 1-1-99.