

CITY of ALBUQUERQUE

TWENTY SECOND COUNCIL

COUNCIL BILL NO. R-16-135 ENACTMENT NO. _____

SPONSORED BY: Patrick Davis

1 RESOLUTION

2 ESTABLISHING POLICY FOR THE ALBUQUERQUE POLICE DEPARTMENT'S
3 CRIMINAL INVESTIGATION OF OFFICER INVOLVED SHOOTINGS AND IN-
4 CUSTODY DEATHS

5 WHEREAS, the Albuquerque Police Department ("APD") presently
6 participates via Memorandum of Understanding (the "MOU") in a Multi-Agency
7 Task Force for the criminal investigation of certain uses of force by APD,
8 including but not limited to officer involved shootings ("OIS"), serious uses of
9 force, and in-custody deaths; and

10 WHEREAS, in its present form the MOU contemplates that an APD
11 detective takes the lead in these investigations and that one of the other
12 participating agencies then partners with that lead APD detective on the
13 investigation; and

14 WHEREAS, although this present system can help to benefit the
15 accountability of the investigation and can help limit investigative bias or
16 predisposition, it still leaves the lead investigative agency to investigate itself
17 in some of the most complicated and difficult circumstances; and

18 WHEREAS, a system that eliminates any APD involvement whatsoever in
19 the investigation APD use of lethal uses of force resulting in death, and in-
20 custody deaths will help to better ensure both the fact and appearance of
21 impartiality in these critical investigations; and

22 WHEREAS, pursuant to the paragraph 48 of the City's court-approved
23 settlement agreement with the United States Department of Justice (the
24 "Settlement Agreement") "APD shall continue to participate in the Multi-
25 Agency Task Force, pursuant to its MOU, in order to conduct criminal
26 investigations (of this nature)"; and

1 WHEREAS, paragraph 85 of the Settlement Agreement authorizes APD and
2 the City to amend its process with the Multi-Agency Task Force or enter new
3 memoranda of understanding for the investigation of OIS, serious uses of
4 force, and in-custody deaths;

5 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY
6 OF ALBUQUERQUE THAT:

7 SECTION 1. Policy Development. The Albuquerque Police Department
8 shall adopt a written policy regarding the referral of investigations of, at a
9 minimum, lethal uses of force resulting in death and in-custody deaths with
10 the following minimum parameters:

11 (1) The policy shall require that each incident of a lethal uses of force by a
12 police department employee (including but not limited to officer involved
13 shootings) and in custody deaths must require an investigation conducted by
14 a law enforcement agency, which:

15 (a) Does not employ any law enforcement officer involved in the
16 incident;

17 (b) Does not share evidence management, report management or court
18 liaison services with the Albuquerque Police Department; and

19 (c) Is not an investigative unit of the Second Judicial District Attorney's
20 Office.

21 SECTION 2. Agreements. The Mayor is directed to execute or amend any
22 memorandum(s) of understanding between the City and law enforcement
23 agencies to make those agencies available for these investigations. The
24 memorandum(s) of understanding shall, at a minimum, include:

25 (1) A process to reimburse, from the budget of the Police Department,
26 the investigating agency for reasonable costs associated with the
27 investigation, to include preparing the investigation report, preparing the
28 investigation for presentation to the appropriate judicial agency and oversight
29 agencies; and

30 (2) Provisions to ensure that the outside agency has and uses their own
31 evidence management system independent of the Albuquerque Police
32 Department; and

1 (3) Provisions to ensure cooperation with APD Internal Affairs and the
2 Civilian Police Oversight Agency in fulfillment of their respective roles and
3 mandates relating to administrative investigations and reviews.

4 **SECTION 3. Prosecutorial Referrals.** The City shall request that an
5 independent special prosecutor be appointed by the Second Judicial District
6 Attorney’s Office for the Investigations covered by this resolution, and
7 otherwise refer the prosecution of these investigations to either the Attorney
8 General or a district attorney not in the second judicial district. Absent
9 appointment of an independent special prosecutor by the second judicial
10 district attorney’s office, such investigations shall be referred to it only in the
11 event of a rejection or untimely response by the New Mexico Attorney
12 General’s Office and any other DA Office referrals sought;

13 **SECTION 4. Funding.** APD shall include a line item in its annual budget
14 specifically dedicated to covering the costs the outside investigatory agencies
15 called for by this resolution, and costs associated with the special
16 prosecutorial process described in Section 3, above (if any).

17 **SECTION 5. Non-interference.** Nothing in this resolution shall prohibit the
18 Albuquerque Police Department, Civilian Police Oversight Agency or other city
19 departments from conducting an internal administrative investigation into any
20 incident as appropriate.

21 **SECTION 6. SEVERABILITY CLAUSE.** If any section, paragraph, word or
22 phrase of this resolution is for any reason held to be invalid or unenforceable
23 by any court of competent jurisdiction, such decision shall not affect the
24 validity of the remaining provisions of this resolution. The Council hereby
25 declares that it would have passed this resolution and each section,
26 paragraph, sentence, clause, word or phrase thereof irrespective of any
27 provision being declared unconstitutional or otherwise invalid.

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