



City of Albuquerque

Office of the City Clerk

Timothy M. Keller, Mayor

Ethan Watson, City Clerk

Interoffice Memorandum

March 28, 2022

To: CITY COUNCIL

From: Camille Cordova, Assistant City Clerk *cc*

Subject: BILL NO. F/S O-21-78; ENACTMENT NO. O-2022-007

I hereby certify that on March 25, 2022, the Office of the City Clerk received Bill No. F/S O-21-78 as signed by the president of the City Council, Isaac Benton. Enactment No. O-2022-007 was passed at the March 7, 2022 City Council meeting. Mayor Keller did not sign the approved Ordinance within the 10 days allowed for his signature and did not exercise his veto power. Pursuant to the Albuquerque City Charter Article XI, Section 3, this Ordinance is in full effect beginning April 4, 2022 without Mayor's approval or signature. This memorandum shall be placed in the permanent file for Bill No. F/S O-21-78.

Sincerely,

Ethan Watson
City Clerk

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

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

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

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

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

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

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

27 There is hereby created a Civilian Police Oversight Agency (the
28 "CPOA") as an independent agency of city government, not part of either the
29 city administration or City Council, consists of the Civilian Police Oversight
30 Agency Board (the "Board") and an Administrative Office led by the CPOA
31 Executive Director (the "Director" or the "Executive Director"). The CPOA is a
32 critical component of police reform and oversight in Albuquerque. This
33 Ordinance is intended to comprehensively establish and set forth the CPOA,

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1 but the CPOA is also contemplated within and bears significant duties and
2 obligations within the 2014 DOJ Settlement Agreement with the City of
3 Albuquerque (or any subsequent agreements), and Findings Letter of April 10,
4 2014 (or any subsequent findings letters). In addition to any other duties, the
5 Executive Director shall direct and oversee the investigation of all civilian
6 complaints relating to officer misconduct, monitor and report on police
7 internal affairs matters, provide staffing to the Board, and manage the day to
8 day operations of the CPOA. The Board shall provide policy guidance for, and
9 civilian oversight of the Albuquerque Police Department. Board members shall
10 rely on the CPOA professional investigative staff to perform the investigations
11 called for under this article, and shall not independently investigate any
12 matters.

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

17 (1) Facility Location. The CPOA shall be housed in a facility
18 that is separate from any police presence and is located outside of the
19 Albuquerque City Hall, the Police Department and/or all of the police
20 substations.

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

31 (3) Professional Legal Services. The CPOA may retain or
32 employ independent legal counsel on a contractual basis to advise and
33 represent the CPOA. If so retained, the CPOA's legal counsel shall represent

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1 the CPOA in the courts, and shall advise the CPOA as to any legal matters
2 relating to §§ 9-4-1-1 through 9-4-1-14 and the CPOA's duties, responsibilities,
3 and procedures except for CPOA personnel matters which shall remain under
4 the authority of the City Attorney's Office.

5 (4) Applicability of City Policies and Ordinances. The CPOA
6 shall comply with all city ordinances and policies dealing with administrative
7 functions including but not limited to those dealing with personnel, the merit
8 system, and procurements.

9 (B) Staff. The CPOA shall employ such staff as necessary to carry
10 out its functions as prescribed by this Article, including but not limited to an
11 executive director, professional investigative staff and other staff as may be
12 necessary, subject to budget sufficiency and city personnel policies and
13 procedures.

14 (C) Responsibilities. The Civilian Police Oversight Agency is
15 responsible for civilian police oversight and has the following powers and
16 duties:

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

25 (2) Promotion of Accountability and Impartiality. The CPOA
26 shall promote a spirit of accountability and communication between the
27 civilians and the Albuquerque Police Department while improving community
28 relations and enhancing public confidence. The CPOA shall also promote a
29 spirit of impartiality in its review of police conduct, and shall ensure that
30 officer conduct is judged fairly and objectively.

31 (3) Investigations. The Administrative Office shall
32 independently investigate all civilian complaints alleging officer misconduct;
33 shall audit and monitor a representative sampling of all incidences of use of

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1 force by police and all matters under investigation by APD's Internal Affairs
2 (IA) or other APD personnel tasked with conducting administrative
3 investigations related to a use of force incident; and shall prepare proposed
4 findings and recommendations on all officer involved shootings and serious
5 uses of force as defined by Article III, Paragraph 12, Subsection (qq) (or as
6 subsequently amended) of the court-approved DOJ Settlement Agreement
7 with the City of Albuquerque ("Serious Uses of Force"). A "representative
8 sampling" means a subset of a population that seeks to accurately reflect the
9 characteristics of the larger group.

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

32 (b) APD shall provide Board members, the Director,
33 and CPOA staff with reasonable access to APD premises, files, documents,

1 reports and other materials that are reasonably necessary for the agency to
2 perform thorough, independent investigations of civilian complaints of officer
3 misconduct and reviews of serious uses of force and officer-involved
4 shootings. However, any material protected from disclosure by law shall
5 remain within the custody and control of APD at all times and will be handled
6 in accordance with the applicable legal restrictions.

7 (c) All complaints filed by police officers will be
8 investigated by Internal Affairs. The Board shall not investigate complaints
9 filed by police officers. Internal Affairs shall provide a weekly update to the
10 Director on all open internal investigations. The CPOA Director's investigation
11 report and findings shall indicate whether within the past year there were any
12 IA investigations or supervisor generated complaints against the officer(s)
13 involved in the incident being investigated or that are otherwise relevant to the
14 subject matter of the investigation, the general nature of the prior
15 investigations or complaints, and whether they resulted in any discipline.
16 Redacted personnel records including those of the Internal Affairs Unit shall
17 be made available to the Board on demand.

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

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1 misdemeanor subject to the penalty provisions set forth in § 1-1-99. This
2 provision shall apply to all aspects of the Board's work.

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

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

17 (g) Disciplinary Recommendations. The Director, with
18 Board approval, may recommend officer discipline from the Chart of
19 Sanctions for investigations that result in sustained civilian police complaints;
20 and may also recommend discipline based on any findings that result from
21 review of internal affairs investigations of officer involved shootings and
22 serious uses of force. Imposition of the recommended discipline is at the
23 discretion of the Chief of Police. However, if the Chief of Police does not
24 follow the disciplinary recommendation of the Director, with Board approval,
25 the Chief of Police shall respond in writing, within 30 days of the department's
26 final disciplinary decision, with a detailed explanation of the reason as to why
27 the recommended discipline was not imposed. The Chief shall identify the
28 specific findings of the Director with which the Chief disagrees, or any other
29 basis upon which the Chief declined the Director's disciplinary
30 recommendation. The CPOA shall report data regarding the outcomes of all
31 disciplinary recommendations, to include whether the Chief imposed the
32 recommended discipline, as part of its quarterly oral reports, as outlined in §
33 9-4-1-4(C)(4).

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1 (h) Summary Disposition of Complaints. The Director
2 shall develop and implement a policy that specifies those complaints, other
3 than officer misconduct, that may be resolved informally or through
4 mediation. Administrative closing or inactivation of a complaint investigation
5 shall be used for the most minor policy violations that do not constitute a
6 pattern of misconduct, duplicate allegations, allegations which are too broad
7 and/or lack any specificity, or allegations that even if true would not constitute
8 officer misconduct.

9 (4) Reports to Mayor & Council. The CPOA shall submit a
10 semi-annual written report to the Mayor and City Council according to § 9-4-1-
11 10 herein. The CPOA Executive Director shall provide a quarterly oral report to
12 the City Council at a regular or special meeting. The oral report shall at a
13 minimum address community outreach efforts, agency progress and
14 initiatives, data regarding actual disciplinary outcomes imposed by the Chief
15 of Police as compared to CPOA disciplinary recommendations, any
16 outstanding Board vacancies and the most forthcoming term expiration(s) of
17 any Board member(s), together with any of the agency's issues or concerns.

18 (5) CPOA Policy Recommendations. The CPOA shall
19 engage in a long-term planning process through which it identifies major
20 problems or trends, evaluates the efficacy of existing law enforcement
21 practices in dealing with the same, analyzes and evaluates data (including
22 APD raw data), innovative practices, national trends, and police best practices,
23 and establishes a program of resulting policy suggestions, recommendations,
24 and studies each year. APD shall provide Board members, the Director, and
25 CPOA staff with reasonable access to APD premises, files, documents,
26 reports, data (including APD raw data), and any other materials that are
27 reasonably necessary for this purpose. For purposes of this article, "APD raw
28 data" includes but is not limited to any facts and statistics or other data
29 gathered, obtained, or that are otherwise within the possession of APD before
30 being processed or analyzed; "police best practices" refers to law
31 enforcement methods or techniques based upon the experiences and
32 outcomes in other police departments or law enforcement agencies that have
33 documented superior results compared to other practices, and to

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1 recommendations by recognized research and policy development groups,
2 forums, consortiums, or similar. The CPOA shall redact any personal
3 identification information from any APD raw data within its possession as
4 permitted by law prior to its release to the public. The CPOA's policy
5 recommendation process shall be as follows:

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

16 (b) Policy Proposals by APD. APD shall provide all
17 policy proposals passed by the APD Policy and Procedures Review Board to
18 the Board for its review, comment, and recommendations prior to final
19 adoption.

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

27 (d) The Board shall review and update as appropriate
28 its policies, rules and procedures that ensure that the Board is effectively
29 accomplishing its duties under this Article on an annual basis. Updates
30 outside of its annual review will become effective only upon a 2/3 vote of the
31 membership of the Board.

32 (e) The chair of the Board shall designate one Board
33 member to serve on each APD policy development committee. The Director

1 and the Board member designated by the Chair shall each serve as voting
2 members and representatives of the Board on such committees, and shall
3 report back to the Board about the outcomes and votes cast at the next
4 regularly scheduled meeting of the Board.

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

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

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

14 (1) Have not been employed by APD law enforcement for at
15 least three years prior to appointment, or have not been employed by other
16 law enforcement departments for at least one year prior to appointment. This
17 provision shall apply only to Board members who are appointed after the
18 effective date of Council Bill No. O-21-78; and

19 (2) Successfully pass a background check; and

20 (3) Personal history lacking any pattern of unsubstantiated
21 complaints against APD; and

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

24 (5) A commitment to transparency and impartial decision
25 making; and

26 (6) Residency within the City of Albuquerque.

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

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1 written policies and procedures for its administration of this process. If a
2 member is eligible for reappointment, that member may request
3 reappointment without a formal application process and the City Council may
4 reappoint accordingly.

5 (D) Timeline for Filling of Vacancies. The Director shall notify the
6 President of the City Council of a forthcoming vacancy on the Board at least
7 sixty days prior to the expiration of a Board Member's term, and within five
8 days of the resignation of a Board member. The City Council shall act on an
9 appointment to fill the vacancy within sixty days of the Council President's
10 receipt of notice from the Director.

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

14 (1) If a Member is appointed to fill an unexpired term of
15 another person, that term shall not be considered a term for the purpose of
16 this limitation if the time remaining in the term at the time of the appointment
17 is one year or less. This provision shall apply only to Board members who are
18 appointed after the effective date of Council Bill No. O-21-78.

19 (F) Removal of Members. Any Board member may be removed for
20 cause by a two-thirds majority vote of either the Board itself or the City
21 Council. In addition to any other reasonable cause, any conduct inconsistent
22 with the requirements and provisions of this article, or a demonstrated
23 inability to objectively adjudicate civilian police complaints, shall constitute
24 cause for removal.

25 (1) The appointment of any member who has been absent
26 and not excused from three consecutive regular or special meetings
27 automatically terminates on the date the third consecutive absence occurs.

28 (2) The appointment of any member who has not completed
29 the training required by subparagraph '(G)(2)', below, automatically terminates
30 if all initial training is not fully completed within an additional 30-day grace
31 period from the expiration of the six month deadline. However, if any training
32 is not completed because the training was not made available by the City, the
33 30-day grace period is extended to include the timeframe within which the

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1 training is offered and can be reasonably completed.

2 (3) The appointment of any member who has not completed
3 the training required by subparagraph '(G)(3)', below, automatically terminates
4 if the eight hours of required on-going training is not fully completed within an
5 additional 30-day grace period of the anniversary date of the member's
6 appointment. However, if any training is not completed because the training
7 was not made available by the City, the 30-day grace period is extended to
8 include the timeframe within which the training is offered and can be
9 reasonably completed.

10 (4) The Director shall notify any member whose
11 appointment has automatically terminated and shall within five days report to
12 the City Council President that a vacancy exists requiring an appointment for
13 the length of the unexpired term. The appointment of a new member to fill the
14 resulting vacancy is subject to the timelines established by paragraph 'E',
15 above.

16 (G) Orientation and Training. Upon initial appointment Board
17 members shall complete an orientation and training program consisting of the
18 following:

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

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

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

25 (2) Required Training. The city shall provide, and each
26 Board member shall complete, a training program within the first six months
27 of the member's initial appointment that consists, at a minimum, of the
28 following:

29 (a) Training on the 2014 DOJ Settlement Agreement
30 with the City of Albuquerque (or any subsequent agreements), and Findings
31 Letter of April 10, 2014 (or any subsequent findings letters);

32 (b) Training on this ordinance and the duties,
33 obligations, and responsibilities that it imposes on Board members and the

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1 CPOA;

2 (c) Training on State and local laws regarding public
3 meetings and the conduct of public officials, including but not limited to
4 inspection of public records, governmental transparency, ethics;

5 (d) Training on civil rights, including the Fourth
6 Amendment right to be free from unreasonable searches and seizures,
7 including unreasonable uses of force;

8 (e) Training on all APD policies related to use of
9 force, including policies related to APD's internal review of force incidents;

10 (f) Training provided to APD officers on use of force;

11 (g) Completion of those portions of the APD Civilian
12 Police Academy that APD determines are necessary for the Board to have a
13 sound understanding of the Department, its policies, and the work officers
14 perform. For purposes of this training requirement, APD shall identify those
15 portions of the standard APD Civilian Police Academy Program that are
16 optional for Board members and shall make other aspects of the program
17 available for Board members to complete independently;

18 (h) At least two APD ride-alongs;

19 (i) Internal Affairs training;

20 (j) A briefing that identifies and explains the
21 curriculum of all training currently received or anticipated to be received by
22 APD officers, including any outside training not provided by the city.

23 (3) Required On-Going Training. Board members shall
24 receive eight hours of annual training to include but not be limited to:

25 (a) any changes in law, policy, or training in the areas
26 outlined under subsection (2) above, as well as developments in the
27 implementation of the 2014 DOJ Settlement Agreement (or any subsequent
28 agreements) until such time as the terms of the agreement are satisfied; or

29 (b) attendance at the annual NACOLE conference,
30 which may satisfy no more than four hours of a Board member's on-going
31 annual training requirements;

32 In addition to the eight hours of on-going annual training, Board members
33 shall also participate in at least two police ride-alongs for every six-months of

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1 service on the Board.

2 (4) Recommended Training. Board members are
3 encouraged to attend conferences and workshops relating to police oversight,
4 such as the annual NACOLE conference at city expense depending on budget
5 availability. The Director, in collaboration with the City and APD, shall maintain
6 training opportunities for members that includes, but is not limited to:

- 7 (a) Annual firearms simulation training; and
- 8 (b) Equity and Cultural Sensitivity training;

9 (5) The CPOA and APD shall jointly create and maintain a
10 Board training calendar that outlines the dates in which the required and
11 recommended training opportunities outlined in this subsection 'G' are
12 available to members of the Board.

13 (6) The Director shall track training progress for each Board
14 member, verify completion of the initial and on-going training requirements for
15 each Board member, and include this information for each Board member as
16 part of the semi-annual reports required by this article. The Director may
17 contract with outside, neutral trainers or training resources in order to
18 effectively implement any of the training called for in this subsection 'G',
19 above.

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

26 (I) Subcommittees. The Board may appoint such subcommittees
27 as are deemed necessary or desirable for the purposes of §§ 9-4-1-1 through
28 9-4-1-14, provided that, membership on such subcommittees shall be limited
29 to Board members and the Board shall strive to evenly distribute
30 subcommittee membership among the entire Board.

31 (J) Meetings. The Board shall conduct regularly scheduled public
32 meetings in compliance with the New Mexico Open Meetings Act, with a
33 prepared agenda that is distributed in advance to the Mayor, City Council,

1 Police Chief, and City Attorney. Each Board meeting will begin with public
2 comments. Only the regularly scheduled monthly meetings and special
3 meetings held pursuant to submission of petitions will be televised live on the
4 appropriate government access channel. All other meetings of the Board shall
5 be videotaped and aired on the appropriate government access channel;
6 however, there is no requirement for providing live television coverage.

7 (1) Public Comment. The Board shall allow general public
8 comment at each of its meetings, and the Board shall also allow comment on
9 each of its agenda items other than Citizen Police Complaints.

10 (K) Subpoenas.

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

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

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

- 19 (a) the inquiry is within the authority of the CPOA;
20 (b) the demand is not too indefinite;
21 (c) the information is relevant to the purpose of the
22 investigation; and
23 (d) all other criteria for the issuance of an
24 administrative subpoena as set forth by New Mexico law are met.

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

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

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

- 33 (a) the subpoenaed person or entity;

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

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

4 (7) The subpoena and notice to third parties must include a
5 citation to this section and state that the recipient has the opportunity to
6 challenge the subpoena to the Board or in the district court having
7 jurisdiction.

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

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

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

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

22 (L) Job Description. The Board shall draft a job description that
23 informs members of their roles, responsibilities, and specific expectations of a
24 CPOA Board member. The Board shall present the job description to the City
25 Council for final approval. Each member of the CPOA Board shall sign the job
26 description to affirm their understanding of their obligations to the Board.

27 § 9-4-1-6 CPOA ADMINISTRATIVE OFFICE.

28 (A) The staff and administration of the CPOA shall be directed by
29 the CPOA Executive Director.

30 (B) In addition to any other duties expressed or implied by this
31 article the Director shall:

32 (1) Direct and oversee the investigation of all civilian police
33 complaints alleging officer misconduct and prepare findings and

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1 recommendations for review by the Board for informational purposes;
2 (2) Review and monitor a representative sampling of all
3 Internal Affairs investigations and other administrative investigations related
4 to officer involved shooting investigations and serious uses of force
5 investigations. The Director shall prepare findings and disciplinary
6 recommendations, as appropriate, relating to officer involved shootings and
7 serious uses of force. Disciplinary recommendations, if any, will be
8 transmitted to the Chief only upon approval of the Board. The Director shall
9 report on general trends and issues identified through monitoring or auditing
10 of Internal Affairs;

11 (3) Provide staffing to the Board and ensure that the duties
12 and responsibilities of the CPOA are executed in an efficient manner, and
13 manage the day to day operations of the CPOA.

14 (C) The Administrative Office will receive and process all civilian
15 complaints of officer misconduct directed against the Albuquerque Police
16 Department. The Director shall direct and oversee the investigation of all
17 civilian complaints alleging officer misconduct and make findings and
18 recommendations for such civilian complaints, or assign them for
19 independent investigation by CPOA staff or an outside independent
20 investigator. If assigned to staff or an outside investigator, the Director shall
21 oversee, monitor and review all such investigations and findings for each. All
22 findings relating to civilian complaints, officer involved shootings, and serious
23 uses of force shall be forwarded to APD internal affairs and to the Board for its
24 information. The Director shall make recommendations and give advice
25 regarding Police Department policies and procedures to the Board in the
26 context of investigative findings as the Director deems appropriate.

27 (1) The review and assessment of civilian complaints filed
28 with the CPOA shall begin immediately after complaints are filed. If the
29 complaint alleges officer misconduct and requires investigation, it shall
30 proceed as expeditiously as possible, and if an investigation exceeds a
31 timeframe of nine months from the date the complaint was first received the
32 Director must report the reasons to the Board; and

33 (2) All civilian complaints filed with other offices within the

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1 city authorized to accept civilian complaints, including the Police Department,
2 shall be immediately referred to the Director; and

3 (3) If appropriate, mediation should be the first option for
4 resolution of civilian police complaints. Mediators should be independent of
5 the CPOA, APD, and the City, and should not be former officers or employees
6 of APD. At the discretion of the Director an impartial system of mediation
7 should be considered appropriate for certain complaints. If all parties involved
8 reach an agreement, no investigation will occur. The CPOA and APD shall
9 coordinate to develop a mediation program that aims to allow civilian police
10 complainants and officers the opportunity to communicate directly regarding
11 disputes, find areas of agreement, and reach their own solutions. APD should
12 ensure that officers have mentorship resources available in advance of
13 mediation that explain the mediation process and the benefits it provides for
14 officers and their relationships with the citizens they serve; and

15 (4) The Director shall monitor all claims of officer involved
16 shootings and serious uses of force. No APD related settlements in excess of
17 \$25,000 shall be made for claims without the knowledge of the Director. The
18 Director shall be an ex-officio member of the Claims Review Board; and

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

21 (6) The Director shall maintain and compile all information
22 necessary to satisfy the CPOA's semi-annual written reporting requirements in
23 § 9-4-1-10; and

24 (7) If at any point during an investigation the investigator
25 determines that there may have been criminal conduct by any APD personnel,
26 the investigator shall immediately notify the APD Internal Affairs Bureau
27 commanding officer and transfer the administrative investigation to the
28 Internal Affairs Bureau.

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

32 (E) The Administrative Office shall staff, coordinate and provide
33 technical support for all scheduled Board meetings, publicize all findings and

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1 reports, recommendations, and/or suggested policy changes.

2 (F) The Director, or the Director's designee, shall play an active
3 public role in the community, and whenever possible, provide appropriate
4 outreach to the community, publicize the civilian complaint process, and
5 identify locations within the community that are suitable for civilians to file
6 complaints in a non-police environment.

7 (G) The Director shall be provided the necessary professional
8 and/or clerical employees for the effective staffing of the Administrative Office,
9 and shall prescribe the duties of these staff members. Such professional and
10 clerical employees will be classified city employees. All CPOA staff with
11 investigative duties shall be professional investigators trained in professional
12 investigation techniques and practices.

13 (H) The Director shall report directly to the Board and lead the
14 Administrative Office; direct and oversee the investigation of all civilian
15 complaints relating to officer misconduct, audit a representative sampling of
16 all IA investigations of complaints, recommend and participate in mediation of
17 certain complaints, and supervise all CPOA staff.

18 (I) The Director shall complete the initial and ongoing training
19 requirements for Board members as prescribed by § 9-4-1-5(G) and report
20 completion of training activities to the Chair of the Board.

21 § 9-4-1-7 CPOA DIRECTOR QUALIFICATIONS, SELECTION, RETENTION
22 AND EVALUATION.

23 (A) Qualifications for the position of Director shall include the
24 requirement of a master's or law degree and relevant experience.

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

28 (1) The Board, through CPOA staff, shall accept
29 applications from candidates. The Board shall review the applications and
30 interview candidates, and submit to the City Council the candidate that it finds
31 to be the best qualified to be the Director. Upon a vacancy in the position of
32 Director, the Board shall submit its recommended replacement to the City
33 Council within 6 months. The Board's recommendation to Council shall be

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1 based on the candidates' integrity, capability for strong management and
2 abilities in investigations, law, management analysis, public administration,
3 criminal justice administration or other closely related fields. The Board's
4 transmittal of its recommendation to the Council shall, at a minimum, include
5 an evaluation of all the candidates against the provisions and requirements of
6 this subsection 9-4-1-7 and identify in writing the basis for its selection as
7 compared to other candidates. The City Council may decline to confirm the
8 Board's recommended candidate only for reasonable cause, including but not
9 limited to lack of a reasonable evaluation process, or lack of a substantive
10 basis for the Board's recommendation.

11 (2) In lieu of recommending a new candidate to the Council,
12 the Board may recommend to the Council the reconfirmation of the incumbent
13 Director. Together with any recommendation for reconfirmation by the Board,
14 the Board shall submit to the City Council a written basis for its
15 recommendation to include a formal evaluation of the Director's past
16 performance, including an evaluation against the duties established for the
17 Director by this article. Should the Council decline to reconfirm the incumbent
18 Director, the Council President shall notify the Board that it needs to provide
19 the Council with an alternate candidate pursuant to the provisions of
20 subsection (B)(1), and the Board shall so submit within 90 days of such notice.
21 The City Council may decline to reconfirm the incumbent Director only for
22 reasonable cause, including but not limited to any failure to fulfill all the
23 requirements and obligations of this article, or ineffective leadership of the
24 organization in its mission toward civilian police oversight. Should the
25 Director not be reconfirmed or should any confirmation vote be delayed or
26 postponed for any reason, the current Director may continue to serve in the
27 same capacity until a new Director is selected and confirmed by the City
28 Council.

29 (3) The Director's compensation shall be established by the
30 Board in consultation with the City Human Resources Department, and shall
31 be commensurate and competitive with salaries for comparable positions
32 within the city and other equivalent agencies in peer municipalities.

33 (4) The term of the Director shall be for three years. Once

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1 confirmed, the Director may be removed only upon: 1) a recommendation of
2 removal to the City Council by the affirmative vote of two-thirds of the
3 members of the Board; and 2) acceptance of the Board's recommendation by a
4 simple majority vote of the City Council.

5 (5) If for any reason there is a period of time during which
6 there is no Director, the City Council may appoint a temporary Director by a
7 majority vote. A temporary Director shall serve in that capacity only for a
8 period not to exceed six months, during which time the Board shall work
9 diligently to select a permanent Director.

10 (6) The Director shall establish and maintain written
11 guidance on who within the Agency will serve in the Director's stead during
12 any temporary absences, such as during personal or sick leave.

13 (C) The Board shall annually review the performance of the
14 Director taking into consideration the obligations and duties prescribed by
15 this article, the criteria outlined in Section 9-4-1-7(B)(1), and the performance
16 of the Administrative Office. The Board is encouraged to consult with City
17 Human Resources to develop evaluation tools as necessary. A summary of
18 these performance evaluations shall be delivered to the Chief of Police, the
19 Mayor, and the President of the City Council for receipt by the Council.

20 § 9-4-1-8 CIVILIAN COMPLAINT PROCEDURES.

21 (A) Any person claiming to be aggrieved by actions of the police
22 may file a written complaint against the department or any of its officers.
23 Neither the Board nor any of its members shall file or initiate a complaint on
24 behalf of a member of the public. Anonymous complaints shall be accepted.

25 (B) In cooperation with the Board, the Mayor shall designate
26 civilian city staff to receive written civilian complaints at various locations
27 throughout the city. The Police Department may also receive written
28 complaints. The party who receives the complaint shall immediately transmit
29 all civilian complaints for further review to the Director.

30 (C) After the review of a civilian complaint is completed, the
31 Director shall analyze all relevant and material circumstances, facts and
32 evidence gathered under the investigation. For each investigation, the Director
33 shall prepare or cause to be prepared investigation reports with findings and

1 recommendations, if any, and submit them to the civilian complainant and to
2 the Board for its information. In addition to the findings and recommendation,
3 each investigation report shall at a minimum also include: 1) a section
4 outlining any relevant background and facts relating to the matter, 2) a listing
5 of any relevant policies, procedures, or practices that are at issue, and 3) an
6 analysis of the issues in the case. The Director may submit disciplinary
7 recommendations to the Chief of Police only upon approval by the Board, but
8 may submit them in advance for informational purposes to help ensure
9 timeliness pursuant to any applicable personnel or union contract
10 requirements.

11 (D) When the Director proposes to submit disciplinary
12 recommendations to the Chief of Police, the Board shall review the proposed
13 disciplinary recommendations at any properly noticed regular or special
14 meeting. The Board shall adopt and follow rules for such reviews that
15 implement the requirements of this article and ensure fairness and
16 completeness in its reviews. For purposes of these reviews, the Board
17 members shall, at a minimum, adhere to the following standards of conduct:

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

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

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

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1 (E) After the Board has completed its review, it shall by majority
2 vote of members present decide whether or not to authorize the submission of
3 the Director's disciplinary recommendations to the Chief of Police. For
4 purposes of this vote, the Board is considering only whether to authorize the
5 submission of the Director's disciplinary recommendation to the Chief. As
6 part of this decision, the Board may consider the merits of the underlying
7 claims, the soundness of the findings supporting the recommendation, and
8 the justness of the recommendations.

9 (F) Upon approval of disciplinary recommendations by the Board,
10 the Director shall prepare and submit a public record letter to the civilian
11 complainant, with a copy to the Chief of Police, that outlines the findings and
12 any disciplinary recommendations. Unless a hearing is requested by the
13 civilian complainant pursuant to Section 9-4-1-9, below, within 30 days of
14 receipt of the decision of the Board the Chief of Police shall notify the Board
15 and the original civilian complainant of his or her final disciplinary decision in
16 this matter in writing, by certified mail and as otherwise prescribed by § 9-4-1-
17 4(C)(3)(g).

18 § 9-4-1-9 REQUESTS FOR HEARING; APPEALS OF DISCIPLINARY
19 DECISIONS.

20 (A) Requests for Hearing. Any person who has filed a civilian
21 complaint and who is dissatisfied with the findings and/or recommendations
22 of the Director may request a hearing by the Board within 30 days (inclusive of
23 weekends and holidays) of receipt of the Director's findings letter. The Board
24 shall notify the Chief of Police of the request for hearing and hold a hearing on
25 the matter at its next regularly scheduled meeting provided that there is a
26 period of at least ten days between the receipt of the request for hearing and
27 the next Board meeting. Any such appeals shall be reviewed in accordance
28 with standards of conduct prescribed by § 9-4-1-8(D). Upon close of the
29 hearing the Board may modify or change the findings and/or
30 recommendations of the public record letter and may make further
31 recommendations to the Chief of Police regarding the findings and/or
32 recommendations and any discipline imposed by the Chief of Police or
33 proposed by the Chief of Police only upon a showing by the complainant that:

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1 1) a policy was misapplied in the evaluation of the complaint; 2) that the
2 findings or recommendations were arbitrary, capricious or constituted an
3 abuse of discretion, or 3) that the findings and recommendations were not
4 consistent with the record evidence. The request must be made by the
5 complainant. Within 20 days of receipt of the decision of the Board, the Chief
6 of Police shall notify the Board and the original civilian complainant of his or
7 her final disciplinary decision in this matter in writing, by certified mail.

8 (B) Appeals of the Final Disciplinary Decision. If any person who
9 has filed a civilian complaint under §§ 9-4-1-1 through 9-4-1-14 is not satisfied
10 with the final disciplinary decision of the Chief of Police or any matter relating
11 to the Chief of Police's handling of his or her complaint, he or she may request
12 that the Chief Administrative Officer review the complaint, the disciplinary
13 recommendation of the Board and the action of the Chief of Police by
14 requesting such review in writing within 30 days (inclusive of weekends and
15 holidays) of receipt of the Chief of Police's letter pursuant to § 9-4-1-9(A).
16 Upon completion of his or her review, the Chief Administrative Officer shall
17 within 90 days, take any action necessary, including overriding the decision of
18 the Chief of Police regarding disciplinary action, to complete the disposition of
19 the complaint. The Chief Administrative Officer shall notify in writing, by
20 certified mail, the complainant, the individual against whom the complaint was
21 filed, the Chief of Police and the Director, of the results of his or her review
22 and any action taken.

23 § 9-4-1-10 REPORTS.

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

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

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

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1 (C) The CPOA's findings and the Chief of Police's issuance of
2 discipline on those findings and the ongoing disciplinary trends of the Police
3 Department;

4 (D) Information on all public outreach initiatives undertaken by the
5 Board or the Director such as speaking engagements, public safety
6 announcements, and/or public information brochures on the oversight
7 process;

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

10 (F) Identification of any matters that may necessitate the City
11 Council's consideration of legislative amendments to this Police Oversight
12 Ordinance;

13 (G) The amount of time that the Board dedicated to the policy
14 activities prescribed by § 9-4-1-4(C)(5) relative to its other activities over the
15 past quarter; and

16 (H) Training progress for each Board member, verifying
17 completion of the initial and on-going training requirements for each Board
18 member.

19 § 9-4-1-11 SPECIAL MEETINGS.

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

27 § 9-4-1-12 CONFIDENTIALITY.

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

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

7 § 9-4-1-13 MANDATORY COOPERATION AGREEMENT.

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

24 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
25 clause, word or phrase of this ordinance is for any reason held to be invalid or
26 unenforceable by any court of competent jurisdiction, such decision shall not
27 affect the validity of the remaining provisions of this ordinance. The Council
28 hereby declares that it would have passed this ordinance and each section,
29 paragraph, sentence, clause, word or phrase thereof irrespective of any
30 provision being declared unconstitutional or otherwise invalid.

31 SECTION 3. COMPILATION. The ordinance amendment prescribed by
32 SECTION 1 shall amend, be incorporated in and made part of the Revised
33 Ordinances of Albuquerque, New Mexico, 1994.

1 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days
2 after publication by title and general summary.

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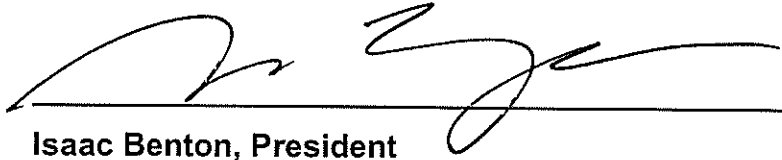
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1 PASSED AND ADOPTED THIS 7th DAY OF March, 2022
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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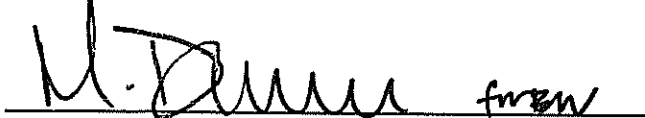
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8 Isaac Benton, President
9 City Council

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13 APPROVED THIS _____ DAY OF _____, 2022

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17 Bill No. F/S O-21-78

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21 _____
22 Timothy M. Keller, Mayor
23 City of Albuquerque

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27 ATTEST:

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30 Ethan Watson, City Clerk
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