

OC-19-33

CITY OF ALBUQUERQUE
CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: Klarissa J. Peña, City Council President
FROM: Stephanie Yara, Director of Council Services 
SUBJECT: Civilian Police Oversight Agency Updated Policies and Procedures
DATE: August 2, 2019

As required per Ordinance § 9-4-1-8(A), the attached updated policies and procedures have been submitted to the City Council by the Civilian Police Oversight Agency for approval.

The updated policies and procedures were approved by the Board of the Civilian Police Oversight Agency at its June 13, 2019 meeting.

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 ("Ordinance").

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 Civilian Police Oversight Agency Board (the "Board") and operates through an Administrative Office. The Executive Director of the CPOA leads the Administrative Office and reports to the Board.

3. These policies and procedures set forth the structure of the Board and CPOA and the manner in which they will operate. The policies and procedures may be supplemented by office policies the Board may approve related to internal operations of the Administrative Office.

ARTICLE II -- MEETINGS

1. **Regular Meetings.** The Board 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 Board 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(s). Copies of the petition shall be filed with the Board by the City Clerk. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Board and shall comply with the Open Meetings Act.

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 Board to consider any matter. "Emergency" for the purpose of this section refers to unforeseen circumstances that, if not addressed immediately by the Board, 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 Board 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 Board held for the purpose of formulating public policy, discussing public business or taking any action within the Board's authority or the delegated authority of the Board, are to be public meetings open to the public at all times. Each year, the Chairperson of the Board shall introduce, and the Board shall adopt, a resolution establishing procedures to provide reasonable notice of Board meetings to the public. Meetings will be conducted with a prepared, timely posted agenda, and, except for emergency matters,

the Board 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 Board serving at any time shall constitute a quorum thereof.

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

A. The Board 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 Board to review, the complainant or complainant's authorized representative will be provided with a minimum of five minutes to address the Board relating to the complaint and investigation.

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

D. The Board may invite representatives of the City, other government bodies, or the public to speak on matters relevant to the Board's work. However, pursuant to Ordinance § 2-6-1-6, the Board shall not organize, sponsor, advertise, or host any political forum for candidates running for elective office. Nothing in this section, however, is intended to restrict any member of the Board from engaging in political activities outside of the course and scope of his or her duties as a member of the Board.

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 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 Board, 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 Board unless excused by the Chairperson.

9. **Disturbing Meetings.** It shall be unlawful to disturb any meeting of the Board 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 CIVILIAN POLICE OVERSIGHT AGENCY BOARD

1. **Election of Chairperson and Vice-Chairperson.** The Board 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 Board 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 Board until their successor(s) have been selected.

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

A. The Chairperson shall:

- (1) Call the Board to order and, upon a quorum being present, proceed to business;
- (2) Preserve order and decorum and, during Board 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 Board 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 Board;
- (9) Sign all resolutions, letters, and official documents on behalf of the Board;
- (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 Board;

- (12) Have the authority to sign all agreements for professional/technical services entered into by the Board to facilitate its functions pursuant to applicable procurement statutes and requirements.

B. Designate one Board member to serve on each APD policy development committee 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 Board member designated by the Chair, as well as the Executive Director, shall each serve as voting members and representatives of the Board on such committees, and shall report back to the Board about the outcomes and votes cast at the next regularly scheduled Board meeting.

C. 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 Board may create such subcommittees as it deems necessary or desirable in performing authorized functions provided that, membership on such subcommittees shall be limited to Board members. Subcommittees shall consist of any number of Board members fewer than a quorum. No Board member shall serve on any more than two subcommittees at any given time.

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 Board assigned to a subcommittee and designated alternates shall constitute a quorum of a subcommittee.

C. Each subcommittee shall elect a Chairperson at the first meeting of the Board in the month of March of each calendar year or upon vacancy of an office to fill the remaining term. The Chairperson may serve consecutive terms, and previous service as the Chairperson shall not prevent a member serving as the Chairperson of a subcommittee. The Chairperson 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 Board 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 Board Chairperson may request that subcommittee reports be submitted in writing and provided to the full Board. 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 each subcommittee Chairperson 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. For purposes of these Policies and Procedures, “conflict of interest” shall include any proceeding or official act in which the Board member has a direct personal financial interest, any proceeding or official act affecting a business in which the Board member has a financial interest, and any proceeding or official act in which he or she does not believe he or she can provide a fair and impartial hearing because of personal opinions or biases that would prevent the Board member from acting fairly and impartially. 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 Board member may be removed for cause by a two-thirds vote of either the Board or the City Council. In addition to any other reasonable cause, any conduct inconsistent with the requirements and provisions of this Police Oversight Ordinance, or a demonstrated inability to objectively adjudicate civilian police complaints shall constitute cause for removal. The appointment of any Board member who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the Board 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. **Notice of Expiration of Board Term.** Six months prior to the expiration of a Board member’s term of appointment, that Board member shall notify City Council of the upcoming expiration as well as whether the Board member would like to be reappointed, or that the Board member is ineligible for reappointment due to applicable term limits. The Board member shall copy the Chair of the Board as well as the CPOA Executive Director on the aforementioned communication to City Council.

7. **Orientation and Training.** Upon initial appointment, Board members shall complete an orientation and training consisting of the following:

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

- (1) Be trained by the CPOA staff or CPOA legal counsel on CPOA policies, and procedures; and
- (2) Attend at least one Board meeting as an observer (except for reappointed Board members).

B. Required Training. Each Board member shall complete a training program within the first six months of the member's initial appointment that consists, at a minimum, of 24 hours of training that covers the following topics:

- (1) Completion of those portions of the Albuquerque Police Department ("APD") Civilian Police Academy that APD determines are necessary for the Board to have a sound understanding of the Department, its policies, and the work officers perform. For purposes of this training requirement, APD shall identify those portions of the standard APD Civilian Police Academy Program that are optional for Board members and shall make other aspects of the program available for Board members to complete independently.
- (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 and the duties, obligations, and responsibilities that it imposes on Board members and the CPOA.
- (10) Training on state and local laws regarding public meetings and the conduct of public officials, including but not limited to inspection of public records, governmental transparency, and ethics.
- (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. Board 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. Board members shall participate in at least two police ride-alongs for every six months of service on the Board.

E. The Executive Director shall report completion of each Board member's initial and ongoing training activities to the Chair of the Board at regular intervals so as to keep the Chair of the Board apprised of these activities.

F. CPOA investigators shall receive at least 40 hours of initial training in conducting misconduct investigations within 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.

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

9. **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 Board during any such period of time.

C. The Board 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. Upon completion, the Board shall provide a summary of its annual performance evaluation of the Executive Director to the Chief of Police, the Mayor, the City Attorney and the President of City Council for receipt by the Council.

10. **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.

11. **Indemnification of CPOA Staff and Board.** The City shall hold harmless, indemnify, and defend the Executive Director, CPOA staff, and Board 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 Board 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 Board 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 Board 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 Board
- (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 Board 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 Board from the business before it.

10. **Early Departure.** Any Board member leaving a Board 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. Neither the Board nor any of its members shall file or initiate a complaint on behalf of a member of the public.

C. Any Board member who files or otherwise initiates a complaint shall recuse from taking any action on the complaint, including evaluating the complaint and voting on its disposition.

D. 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.

E. 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 Board. 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 Board regarding APD policies and procedures as the Executive Director deems advisable.

F. 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.

G. 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 Board on the status of any investigations that are not on track to be completed in sufficient time for the Board to make disciplinary recommendations in advance of the deadline for the Chief of Police (“Chief”) to impose discipline.

H. 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.

I. 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 Board 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.

J. The Executive Director shall explicitly identify and recommend to the Board 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.

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

L. 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 Board 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 Board 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 Board's findings and recommendations.

M. 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.

N. The Executive Director, and 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 Board 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 Board 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 Board, an independent investigator shall perform the functions of the Executive Director for purposes of that complaint.

2. **Serious Use 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 Board 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 Board.

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.
- (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.**

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

5. **Administrative Subpoenas.**

A. The CPOA may issue administrative subpoenas, in the form that has been approved by the Board and Executive Director, and attached hereto as Appendix A, only as necessary to investigate civilian complaints, or to audit and monitor incidences of use of force by police.

B. Prior to seeking an administrative subpoena, the Executive Director must make a reasonable attempt to exhaust all other avenues for obtaining the information sought.

C. To issue an administrative subpoena, the Executive Director must ensure that:

- (1) the inquiry is within the authority of the CPOA;
- (2) the demand is not too indefinite;

- (3) the information is relevant to the purpose of the investigation; and
- (4) all other criteria for the issuance of an administrative subpoena as set forth by New Mexico law are met.

D. The Executive Director must obtain Board authorization to issue an administrative subpoena. A simple majority vote of the membership of the Board in favor is required before an administrative subpoena may be issued.

E. Administrative subpoenas shall be served in a manner that complies with all requirements for administrative subpoenas under New Mexico Law. Administrative subpoenas shall identify with reasonable specificity the person(s) or document(s) sought as well as the general relevancy to an issue in the case of the testimony or document(s) sought.

F. An administrative subpoena must provide at least 14 calendar days' notice prior to the deadline for responding to the subpoena and be served on the following:

- (1) the subpoenaed person or entity;
- (2) any individual or entity that is the subject of subpoenaed records; and
- (3) the City Attorney for the City of Albuquerque.

G. A person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the administrative subpoena, serve upon the agency designated in the administrative subpoena, as well as the Albuquerque City Attorney, and the Civilian Police Oversight Agency Board written objections specifying the bases for the objections to the inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may challenge the administrative subpoena in a district court of the county where he or she resides.

H. The administrative subpoena and notice to third parties must include a citation to the Ordinance, § 9-4-1-5(J) and state that the recipient has the opportunity to challenge the administrative subpoena to the Board or in the district court having jurisdiction.

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

(1) The person or entity to whom an administrative subpoena is directed may submit a written objection in advance of the date scheduled for the appearance or production required by the administrative subpoena. The objection must be in writing, delivered to the CPOA office, and must specify the grounds for the objection.

(2) For five (5) days after receipt of a timely submitted objection to an administrative subpoena, the CPOA will take no action to enforce the administrative subpoena or initiate prosecution of the person or entity to whom the administrative subpoena is directed. During this five-day period, the CPOA will consider the grounds for the objection and may attempt to resolve the objection through negotiation with the person or entity to whom the administrative subpoena is directed. The five-day period may be extended by the CPOA to allow completion of negotiations. The CPOA will provide written notice of the extension to the person or entity to whom the administrative subpoena is directed. Such notice will specify the date on which the negotiation period will end. Negotiations may include such matters as the scope of the administrative subpoena and the time, place, and manner of response thereto.

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

K. Any summoned person may, at his or her own expense, be represented by legal counsel during all CPOA or Board proceedings.

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

M. Any applicable witness fees and/or costs associated with service of process for an administrative subpoena shall be paid by the CPOA.

N. In connection with the Board authorization to issue an administrative subpoena, the Board shall also vote to request an investigation time-limit waiver from any applicable association that may have such time limits or other deadlines in a collective bargaining agreement or other contract.

6. **Board Review.**

A. The Board shall review the proposed findings and recommendations at any properly noticed regular or special meeting.

B. For its reviews of the proposed findings and recommendations, the Board shall:

- (1) Remain impartial in deliberations and decisions and abstain from any independent investigation or review of information not presented by the investigation report or within the investigation file;
- (2) Refrain from any ex-parte communication relating to the matters and parties under consideration other than at a properly noticed meeting, and recuse from any related hearings as may be necessary based on any improper ex parte communication; any ex-parte correspondence that is inadvertently received by a member shall be referred to or otherwise disclosed to the Director and, when appropriate, made available for review by the relevant complainant and APD officer or their representatives; and
- (3) Refrain from prejudgment on complaints coming before the Board until such time as all relevant information has been reviewed and considered at a properly noticed meeting, and recuse from any hearing in which he or she has a direct or indirect personal conflict of interest or cannot otherwise accord a fair and impartial review, or in which such member's participation would create the appearance of impropriety or partiality.
- (4) For purposes of these Policies and Procedures, "ex parte communication" is defined as a communication (whether written or oral), outside of the public meeting process outlined herein, between a member or members of the Board and any member of the public regarding the merits of a civilian complaint or the proposed findings and recommendations under review by the Board. Communications between a member or members of the Board and the staff or attorneys of the CPOA shall not be considered ex parte communications provided that such communications are not relied upon to make factual determinations by a member or members of the Board.

C. After the Board has reviewed the proposed findings and recommendations the Executive Director prepares, the Board shall, by majority vote of members present,:

- (1) Approve the findings and recommendations as proposed;
- (2) Approve other findings and recommendations as the Board determines are supported by the investigation file;
- (3) Defer action on the matter to allow for further investigation or analysis by

the Executive Director on specifically identifiable matters.

- (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 Board for a final review again pursuant to the subsections contained herein.

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

E. In reviewing completed investigations, the Board 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.

F. 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 Board approved. The Executive Director shall transmit that letter the next business day following the meeting during which the Board took action on the complaint.

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

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

7. **Requests for Reconsideration.**

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

B. The Board 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 (i.e. the APD policy or policies that were considered by the Board were the wrong policies or they were used in the wrong way);
- (2) the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion (i.e. the APD policy or APD policies considered by the Board were chosen randomly, they do not address the issues in the complaint, or the findings of the Board had no explanation that would lead to the conclusion made by the Board); or

- (3) the findings and recommendations were not consistent with the record evidence (i.e. the findings were not supported by the evidence that was available to the Board at the time of the investigation).

C. The Board 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 Board 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 Board 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 Board 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 Board 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 Board during the hearing on a request for reconsideration. Whether to accept new evidence a party proffers is left to the discretion of the Board, and the Board may decide to rely on the evidence on the record. If the Board 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 Board:

- (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.
- (6) Board members shall remain impartial in deliberations and decisions and shall recuse from any related hearings as may be necessary based on receipt of improper ex-parte communications or in which he or she has a direct or indirect personal conflict of interest or cannot otherwise accord a fair and impartial review, or in which such member's participation would create the appearance of impropriety or impartiality.

K. Upon close of the hearing on a request for reconsideration, the Board 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 Board's decision, the Chief shall notify the Board and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail.

8. **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 Board 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.

9. **Maintenance of Documentation Regarding Findings.** The Board '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.

10. **Disciplinary Recommendations.**

A. The Board may, in its discretion, recommend officer discipline from the Chart of Sanctions for investigations that result in sustained civilian police complaints. The Board 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 Board recommends is at the discretion of the Chief, but if the Chief does not follow the Board's disciplinary recommendation, by Ordinance, the Chief is supposed to respond in writing, within thirty (30) days of the department's final disciplinary decision, with a detailed explanation of the reason as to why the recommended discipline was not imposed. By Ordinance the Chief is supposed to identify the specific findings of the Board with which the Chief disagrees, or any other basis upon which the Chief declined the Board's disciplinary recommendation.

11. **Audits.** The Board 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 Board may, by a vote of two-thirds of the members of the Board, perform an audit, or direct that an audit be performed, on any individual civilian police complaint investigation by the CPOA.

12. **Policy Recommendations.**

A. The Executive Director will provide quarterly reports updating the Board 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, analyze and evaluate data (including APD raw data), innovative practices, national trends, and police best practices, and establish a program of resulting policy suggestions and studies each year. The Board 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 Board may recommend policies related to programs and procedures or other matters relating to APD. These policy recommendations shall be supported by specific, written findings of the Board in support of the proposed policies.

C. APD shall provide all policy proposals by the APD Policy and Procedures Review Board to the Board for its review, comment, and recommendations prior to final adoption.

D. By Ordinance, the Chief is supposed to respond to any policy recommendations from the CPOA as set forth in paragraphs B and C above in writing within forty-five (45) days of final action on a policy by APD. By Ordinance, in this APD is supposed to indicate whether Board's policy recommendations will be followed through standing operating procedures, or specifically explain any

reasons why such policy recommendations will not be followed or were not adopted.

E. The Board must dedicate a majority (more than 50%) of its time to policy recommendations.

13. **Monitoring.**

A. The Executive Director shall monitor and periodically report to the Board on claims of excessive force. This shall include reporting to the Board on APD-related settlements in excess of \$25,000 at the regularly scheduled Board 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, in conjunction with APD, shall develop a system to ensure that allegations by a judicial officer of officer misconduct made during a civil or criminal proceeding are identified and assessed for further investigation. Any decision to decline investigation shall be documented.

D. 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.

14. **Reporting.**

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

1. Number and type of complaints received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
2. Demographic category of complainants;
3. Number and type of serious force incidents received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
4. Number of officer-involved shootings received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
5. Policy changes submitted by APD, including any dispositions by the Executive Director, the agency, and the Chief;
6. Policy changes recommended by the agency, including any dispositions by the Chief;
7. Public outreach efforts undertaken by the agency and/or Executive Director;
8. Training progress for each Board member; and
9. Trends or issues with APD's use of force, policies, or training.

B. The Executive Director shall provide a quarterly oral report to the City Council at its regular or special meeting. This oral report shall at a minimum address community outreach efforts, agency progress and initiatives, together with any of the agency's issues or concerns.

ARTICLE VI -- BUDGET

1. **Budget.** CPOA staff shall present to the Board a budget at such a time as to provide the Board 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. **Board Hearings.**

A. The Board 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 Board 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. **Board Access to Investigation Materials.**

The Board 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 Board 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 Board on application submitted in writing pursuant to a majority vote of the Board. Where the Board 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, NMSA 1978, § 10-15-1(H)(2). The Board shall only summarize conclusions reached after a review of a *Garrity* material, but shall not disclose the statement.

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

APPENDIX A - Form Administrative Subpoena

CITY OF ALBUQUERQUE
Albuquerque Civilian Police Oversight Agency

ADMINISTRATIVE SUBPOENA

SUBPOENA FOR

- ☐ APPEARANCE OF PERSON FOR
- ☐ INVESTIGATIVE INTERVIEW
- ☐ HEARING BEFORE THE CIVILIAN POLICE OVERSIGHT BOARD
- ☐ SUBPOENA FOR DOCUMENTS OR OBJECTS
- ☐ INSPECTION OF PREMISES

TO: Name of Person
Address
Address

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place: Albuquerque Civilian Police Oversight Agency
600 2nd STREET NW, SUITE 813, Plaza del Sol Building
ALBUQUERQUE, NEW MEXICO 87102

Date:

Time:

to: ☐ be interviewed by an Agency Investigator;
☐ permit inspection of the following described documents or objects:

☐ permit the inspection of the premises located at:

(address)

YOU ARE ALSO COMMANDED to bring/produce the following document(s) or object(s):

The aforementioned testimony and/or documents are related to the following issue(s) in the case as follows:

general relevancy to an issue in the case of the testimony or document(s) sought

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

Dated this _____ day of _____, 201____.

_____, Chairperson
Board of the Albuquerque Civilian Police Oversight
Agency

Attested by:

Clerk of the City of Albuquerque, _____

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the ____ day of _____, 2019, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, a fee of \$ _____ (insert the amount of fee tendered or, if no fee is tendered, "none").

Deputy Sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the ____ day of _____, 2019, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena and a fee of \$ _____ (insert the amount of fee tendered or, if no fee is tendered, "none").

Person making service

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2019.

Judge, notary or other officer authorized to administer oaths

THIS SUBPOENA issued by or at request of:
Albuquerque Civilian Police Oversight Agency
600 2nd Street, NW, Suite 813
Albuquerque, New Mexico 87103
(505) 924-3770

CERTIFICATE OF SERVICE BY CIVILIAN POLICE OVERSIGHT AGENCY

I certify that I caused a copy of this subpoena to be served on the following by mail on _____, ___, 2019:

1) The individual or entity that is the subject of subpoenaed records, identified as follows:

; and

2) The Albuquerque City Attorney, One Civic Plaza, 4th Floor, Room 4072, Albuquerque, NM 87102

NAME:

TITLE:

Albuquerque Civilian Police Oversight Agency

600 2nd Street, NW, Suite 813

Albuquerque, New Mexico 87103

(505) 924-3770

TO BE PRINTED ON EACH ADMINISTRATIVE SUBPOENA

1. This administrative subpoena must be served on each party in the manner provided by City of Albuquerque Ordinance, § 9-4-1-5(J).
2. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for an interview, or hearing before the Civilian Police Oversight Board.

PROTECTION OF PERSONS SUBJECT TO ADMINISTRATIVE SUBPOENAS

The agency for the issuance and service of an administrative subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that administrative subpoena.

A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for an interview or hearing.

A person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the administrative subpoena, serve upon the agency designated in the administrative subpoena, as well as the Albuquerque City Attorney, and the Civilian Police Oversight Agency Board written objections specifying the bases for the objections to the inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may challenge the administrative subpoena in a district court of the county where he or she resides.

For five (5) days after receipt of a timely submitted objection to an administrative subpoena, the Civilian Police Oversight Agency will take no action to enforce the administrative subpoena or initiate prosecution of the person or entity to whom the administrative subpoena is directed. During this five-day period, the Civilian Police Oversight Agency will consider the grounds for the objection and may attempt to resolve the objection through negotiation with the person or entity to whom the administrative subpoena is directed. The five-day period may be extended by the Civilian Police Oversight Agency to allow completion of negotiations. The Civilian Police Oversight Agency will provide written notice of the extension to the person or entity to whom the administrative subpoena is directed. Such notice will specify the date on which the negotiation period will end. Negotiations may include such matters as the scope of the administrative subpoena and the time, place, and manner of response thereto.

If a challenge is served, or a lawsuit is filed, and served on the persons identified on the administrative subpoena, the agency serving the administrative subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena challenge was filed. If a challenge has been made, the agency serving the subpoena may, upon notice to the person commanded to produce, file a legal action for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

On timely challenge, Board of the Civilian Police Oversight Agency or a court where the challenge is lodged shall quash or modify the administrative subpoena if it:

- (1) fails to allow reasonable time for compliance,
- (2) requires a person to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a

person may in order to attend a hearing be commanded to travel from any such place within the state in which the hearing is held, or

- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If an administrative subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires a person to incur substantial expense to travel, the Civilian Police Oversight Agency Board or court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the agency on whose behalf the administrative subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the administrative subpoena is addressed will be reasonably compensated, the Civilian Police Oversight Agency Board or the court may order appearance or production only upon specified conditions.

In the case of a refusal to obey an administrative subpoena issued to any person, the Executive Director may make application to a district court in the state having jurisdiction to order the witness to appear before the Civilian Police Oversight Agency Board and to produce evidence if so ordered, or to give testimony touching on the matter(s) in question.

Any summoned person may, at his or her own expense, be represented by legal counsel during all Civilian Police Oversight Agency proceedings.

DUTIES IN RESPONDING TO ADMINISTRATIVE SUBPOENA

- (1) A person responding to an administrative subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to an administrative subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written challenge is served or a lawsuit is filed until a court order or Board decision requires their production or inspection.

[Pursuant to Ordinance, § 9-4-1-5(J).]