



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FIRST COUNCIL

COUNCIL BILL NO. F/S(3) O-14-13 ENACTMENT NO. _____

SPONSORED BY: Rey Garduño & Brad Winter

ORDINANCE

F/S(3) Amending Chapter 9, Article 4, Part 1 ROA 1994, The Police Oversight Ordinance, To Abolish The Police Oversight Commission And Establish The Civilian Police Oversight Agency With New Or Amended Duties, Qualifications And Responsibilities, And Adopting Related Amendments Dealing With The Civilian Police Oversight Agency And The Internal Review Office (Garduño, Winter)

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. SECTION 9-4-1 IS HEREBY AMENDED AS FOLLOWS:

“PART 1: CIVILIAN POLICE OVERSIGHT AGENCY

§ 9-4-1-1 SHORT TITLE.

Sections 9-4-1-1 through 9-4-1-14 may be cited as the Police Oversight Ordinance.

§ 9-4-1-2 PURPOSE.

The purpose of §§ 9-4-1-1 through 9-4-1-14 is to:

- (A) Foster and perpetuate policing policies and practices that effectively maintain social order and which at the same time foster mutual trust and cooperation between police and civilians;
- (B) Ensure that the civilian police oversight body functions as independently as possible from the executive and legislative branches of government of the City of Albuquerque;
- (C) Provide civilians and police officers a fair and impartial system for the

investigations and determinations on civilian police complaints;

(D) Gather and analyze data on trends and potential issues concerning police conduct and practices and the related impacts on the community and individuals; and

(E) Provide policy guidance to the City Council, the Mayor and the Chief of Police.

§ 9-4-1-3 LEGISLATIVE FINDINGS.

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

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

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

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

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

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

§ 9-4-1-4 ESTABLISHMENT OF A CIVILIAN POLICE OVERSIGHT AGENCY.

There is hereby created a Civilian Police Oversight Agency (the "CPOA") as an independent agency of City Government, not part of either the City Administration or City Council that consists of a Police Oversight Board (the "POB") and an Administrative Office led by the

CPOA Executive Director. In addition to any other duties, the Administrative Office, through the Executive Director and staff, shall investigate all civilian complaints relating to police conduct, monitor and report on police internal affairs matters, provide staffing to the POB, and manage the day to day operations of the CPOA. The POB shall provide policy guidance for, and civilian oversight of the Albuquerque Police Department and review and approve or amend the findings and conclusions of all investigations completed by the Administrative Office.

(A) Independence. The CPOA is independent of the Mayor's Office, the City Council, and the Albuquerque Police Department with respect to the performance of its oversight role and duties under this ordinance.

(1) Facility Location. The CPOA shall be housed in a facility that is separate from any police presence and is located outside of the Albuquerque/Bernalillo Government Center, the Police Department and/or all of the police substations.

(2) Budget. The CPOA shall have a dedicated and independent source of funding equal to, at a minimum, ½% of APD's annual operation budget, administer its own budget and supervise its own staff in compliance with the City's Merit Ordinance and contractual services policies and procedures. The CPOA shall recommend and propose its budget to the Mayor and City Council during the City's budget process to carry out the powers and duties under §§ 9-4-1-1 through 9-4-1-14, including the funding for staff, and all necessary operating expenses.

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

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

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

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

(1) Community Outreach. The CPOA shall develop, implement, and from time to time amend as necessary, a program of community outreach aimed at soliciting public input from the broadest segment of the community in terms of geography, culture, ethnicity, and socio-economics. The CPOA shall employ or designate a full time staff member within the Administrative Office dedicated to community outreach efforts. The CPOA shall report its community outreach efforts to the City Council on an annual basis.

(2) Promotion of Accountability. The CPOA shall promote a spirit of accountability and communication between the civilians and the Albuquerque Police Department while improving community relations and enhancing public confidence.

(3) Investigations. The Administrative Office shall independently investigate all civilian complaints; shall audit and monitor all incidences of use of force by police and all matters under investigation by APD's Internal Affairs (IA); and shall prepare proposed findings and recommendations on all officer involved shootings. All complaints filed by police officers will be investigated by Internal Affairs. Internal Affairs shall provide a weekly update to the Director on all open internal investigations. The Director's investigation report and findings 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. Redacted personnel records including those of the Internal Affairs Unit shall be made available to the POB on demand. Access to information that could be construed to be covered by *Garrity* will be made available to the POB only by application in writing, and by majority vote by the POB.

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

(b) POB Audits; Access to Files. The POB may, by majority vote, perform an annual audit, or direct that an audit be performed, on a random sample of up to 10% of individual civilian police complaint investigations involving allegations of use of force. For purposes of its audit function, the POB shall have full access to investigation files and may

subpoena such documents and witnesses as relevant to its audit function. In its review of the investigation file, the POB may review *Garrity* material or confidential material only in a closed session as permitted under the New Mexico Open Meetings Act. The POB shall maintain the confidentiality of any *Garrity* material or records that are made confidential by law and is subject to the same penalties as the custodian of those records for violating confidentiality requirements. In addition to any other penalty, any POB member or other person who violates the confidentiality provisions of this section shall be removed from the POB, and shall be subject to prosecution for a misdemeanor subject to the penalty provisions set forth in § 1-1-99. Access to information that could be construed to be covered by *Garrity* will be made available to the POB only by application in writing, and by majority vote by the POB.

(c) Disciplinary Recommendations. The POB may, in its discretion, recommend officer discipline from the Chart of Sanctions for investigations that result in sustained civilian police complaints; and may also recommend discipline based on any findings that result from review of internal affairs investigations, including but not limited to officer involved shootings. Imposition of the recommended discipline is at the discretion of the Chief of Police, but if the Chief of Police does not follow the disciplinary recommendation of the POB, the Chief of Police shall respond in writing, within thirty (30) days, with the reason as to why the recommended discipline was not imposed.

(4) Reports to Mayor & Council. The CPOA shall submit a semi-annual written report to the Mayor and City Council according to § 9-4-1-10 herein. The CPOA Executive Director shall provide a quarterly oral report to the City Council at a regular or special meeting.

(5) CPOA Policy Recommendations. The CPOA shall engage in a long-term planning process through which it identifies major problems or trends, evaluates the efficacy of existing law enforcement practices in dealing with the same, and establishes a program of resulting policy suggestions and studies each year. The CPOA's policy recommendation process shall be as follows:

(a) The POB shall review and analyze policy suggestions, analysis, studies, and trend data collected or developed by the Administrative Office, and shall by majority vote recommend policies relating to training, programs and procedures or other matters relating to APD. The POB's policy recommendations shall be submitted to APD and to the City Council. The POB shall dedicate a majority (more than 50%) of its time to the functions described in this

subsection.

(b) The Chief of Police shall respond in writing within forty-five (45) days to any such policy recommendations by the CPOA, and indicate whether they will be followed through standard operating procedures or should be adopted as policy by the City Council, or explain any reasons why such policy recommendations will not be followed or should not be adopted.

(c) Within six months of its appointment, the POB shall draft and approve policies, rules and procedures that ensure that the POB shall dedicate a majority of its time to the functions described in this subsection.

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

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

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

- (1) Have not been employed by law enforcement for one year prior to appointment; and
- (2) Successfully pass a background check; and
- (3) Personal history lacking any pattern of unsubstantiated complaints against APD; and
- (4) A demonstrated ability to engage in mature, impartial decision making; and
- (5) A commitment to transparency and impartial decision making; and
- (6) Residency within the City of Albuquerque.

(C) Appointment of Members. The City Council shall establish a well-publicized, fair and equitable application process for appointment to the POB. The City Council, through its staff, shall accept applications from prospective POB members. Staff shall formulate recommendations for appointments based on evaluation of the qualification criteria listed in subsections 'A' and 'B' above and submit recommendations for appointment(s) to the City Council for its approval. If a member is eligible for reappointment, staff may suggest reappointment of that member without a

formal application process and the City Council may reappoint accordingly.

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

(E) Removal of Members. Any POB member may be removed for cause by a two-thirds majority vote of either the POB itself or the City Council. The appointment of any member who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the POB to the City Clerk. 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.

(F) Orientation and Training. Upon appointment or reappointment POB members shall complete an orientation and training program consisting of the following:

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

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

(b) Attend at least one POB meeting as an observer (except initial appointees).

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

(a) Completion of the APD Civilian Police Academy;

(b) Civil Rights training;

(c) At least two (2) APD ride-alongs;

(d) Annual firearms simulation training;

(e) Internal Affairs training;

(f) Use of Force training, including a review and familiarization with the APD Use of Force Policy;

(g) Equity and Cultural Sensitivity training; and

(h) Periodic additional training on items (b) through (g) above, or other periodic training as determined by the Mayor, City Council or the CPOA.

(3) Recommended Training. POB members are encouraged to attend conferences and workshops relating to police oversight, such as the annual NACOLE conference at City expense depending on budget availability.

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

(H) Subcommittees. The POB may appoint such subcommittees as are deemed necessary or desirable for the purposes of §§ 9-4-1-1 through 9-4-1-14, provided that, membership on such subcommittees shall be limited to POB members.

(I) Meetings. The POB shall conduct regularly scheduled public meetings with a prepared agenda that is distributed in advance to the Mayor, City Council, Chief of Police, and City Attorney, and that complies with the New Mexico Open Meetings Act. Each POB meeting will begin with public comments and only the regularly scheduled monthly meetings and special meetings held pursuant to submission of petitions will be televised live on the appropriate government access channel. All other meetings of the POB will comply with the Open Meetings Act and shall be videotaped and aired on the appropriate government access channel; however, there is no requirement for providing live television coverage.

1. Public Comment. The POB shall allow general public comment at each of its meetings, and the POB shall also allow comment on each of its agenda items.

§ 9-4-1-6 CPOA ADMINISTRATIVE OFFICE.

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

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

(1) Independently investigate, or cause to be investigated, all civilian police complaints and prepare findings and recommendations for review by the POB;

(2) Review and monitor all Internal Affairs investigations including but not limited to officer involved shooting investigations. The Director shall prepare and submit findings and recommendations to the POB relating to officer involved shootings, and shall report on

general trends and issues identified through monitoring or auditing of Internal Affairs;

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

(C) The Administrative Office will receive and process all civilian complaints directed against the Albuquerque Police Department and any of its officers. The Director shall independently investigate and make findings and recommendations for review by the POB for such civilian complaints, or assign them for independent investigation by CPOA staff or an outside independent investigator. If assigned to staff or an outside investigator, the Director shall oversee, monitor and review all such investigations and findings for each. All findings relating to civilian complaints and police shootings shall be forwarded to the POB for its review and approval. For all investigations, the Director shall make recommendations and give advice regarding Police Department policies and procedures to the POB as the Director deems advisable.

(1) Investigation of all civilian complaints filed with the CPOA shall begin immediately after complaints are filed and proceed as expeditiously as possible, and if an investigation exceeds a timeframe of nine months the Director must report the reasons to the POB; and

(2) All civilian complaints filed with other offices within the City authorized to accept civilian complaints, including the Police Department, shall be immediately referred to the Director for investigation; and

(3) Mediation should be the first option for resolution of civilian police complaints. Mediators should be independent of the CPOA, APD, and the City, and should not be former officers or employees of APD. At the discretion of the Director an impartial system of mediation should be considered appropriate for certain complaints. If all parties involved reach an agreement, the mediation is considered successful and no investigation will occur; and

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

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

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

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

(E) The Administrative Office shall staff, coordinate and provide technical support for all scheduled POB meetings, publicize all findings and reports, recommendations, and/or suggested policy changes.

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

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

(H) The Director shall report directly to the POB and lead the Administrative Office; independently investigate or supervise all investigations of civilian complaints, audit all IA investigations of complaints, recommend and participate in mediation of certain complaints, and supervise all CPOA staff.

§ 9-4-1-7 CPOA DIRECTOR QUALIFICATIONS AND SELECTION.

(A) Qualifications for the position of Director shall minimally include the requirement of a law degree and experience in criminal investigations.

(B) The Director will be a full-time contractual City employee to be selected as follows:

(1) The POB, through CPOA staff, shall accept applications from candidates. The POB shall review the applications and interview candidates, and submit to the City Council a ranked list of the three candidates that it finds to be the best qualified to be the Director and the City Council shall appoint the Director from the three by majority vote. The POB's recommendation to Council shall be based on the candidates' integrity, capability for strong management and abilities in investigations, law, management analysis, public administration,

criminal justice administration or other closely related fields.

(2) In lieu of recommending three candidates to the Council, the POB may recommend to the Council the reconfirmation of the incumbent Director. Should the Council decline to reconfirm the incumbent Director, the Council President shall notify the POB that it needs to provide the Council with three alternate candidates pursuant to the provisions of Subsection (B)(1). Should the Director not be reconfirmed, the current Director may continue to serve in the same capacity until a new Director is selected and approved by the City Council. If for some unforeseen reason there is a period of time during which there is no Director, the City Council may appoint a temporary Director of its choosing by a majority vote. A temporary Director shall serve in that capacity only for a period not to exceed six months.

(3) The term of the Director shall be for three (3) years. Once confirmed, the Director may be removed only upon: 1) a recommendation of removal to the City Council by the affirmative vote of two-thirds (2/3) of the members of the POB; and 2) acceptance of the POB's recommendation by a simple majority vote of the City Council.

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

(A) Any person claiming to be aggrieved by actions of the Police may file a written complaint against the department or any of its officers. The POB shall submit rules and regulations governing civilian complaint procedures to the City Council for approval, including rules and regulations relative to time limits, notice and other measures to insure impartial review of civilians' complaints against members of the police department. Anonymous complaints shall be accepted.

(B) In cooperation with the POB, the Mayor shall designate civilian City staff to receive written civilian complaints at various locations throughout the City. The Police Department may also receive written complaints. The party who receives the complaint shall immediately transmit all civilian complaints for further investigation to the Director.

(C) After the investigation of a civilian complaint is completed, the Director shall analyze all relevant and material circumstances, facts and evidence gathered under the investigation. For each investigation, the Director shall prepare investigation reports with proposed findings and recommendations and submit them to the POB for its review and consideration. The Director may share any disciplinary recommendations with the Chief of Police in advance of their submission to the POB only as necessary to help ensure timeliness pursuant

to any applicable personnel or union contract requirements. The POB shall review the proposed findings and recommendations, and shall by majority vote of members present: 1) approve the findings and recommendations as proposed; 2) approve other findings and recommendations as determined by the POB and supported by the investigation file; or 3) defer action on the matter to allow for further investigation or analysis by the Director. As part of its review, the full investigation file shall be made available to the POB. In its review of the investigation file, the POB may review *Garrity* material or confidential material only in a closed session as permitted under the New Mexico Open Meetings Act. Access to information that could be construed to be covered by *Garrity* will be made available to the POB only by application in writing, and by majority vote by the POB. The POB shall maintain the confidentiality of any *Garrity* material or records that are made confidential by law and is subject to the same penalties as the custodian of those records for violating confidentiality requirements. In addition to any other penalty, any POB member or other person who violates the confidentiality provisions of this section shall be removed from the POB, and shall be subject to prosecution for a misdemeanor subject to the penalty provisions set forth in § 1-1-99. Upon approval of findings and recommendations by the POB, the Director shall prepare and submit a public record letter to the civilian complainant, with a copy to the Chief of Police, that outlines the findings and recommendations as approved. Unless a hearing is requested by the civilian complainant, within 30 days of receipt of the decision of the POB, the Chief of Police shall notify the POB and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail.

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

(A) Requests for Hearing. Any person who has filed a civilian complaint and who is dissatisfied with the findings and/or recommendations approved by the POB may request reconsideration by the POB within thirty days (inclusive of weekends and holidays) of receipt of the public record letter. The POB may grant a request for reconsideration only upon a showing by the complainant that: 1) a policy was misapplied in the evaluation of the complaint; 2) that the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion, or 3) that the findings and recommendations were not consistent with the record evidence. The POB shall notify the Chief of Police of the request for hearing and hold a hearing on the matter at its next regularly scheduled meeting provided that there is a period of at least ten (10) days between the receipt of the request for hearing and the next POB meeting. Upon close of the hearing the

POB may modify or change the findings and/or recommendations of the public record letter and may make further recommendations to the Chief of Police regarding the findings and/or recommendations and any discipline imposed by the Chief of Police or proposed by the Chief of Police. Within 20 days of receipt of the decision of the POB, the Chief of Police shall notify the POB and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail.

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

§ 9-4-1-10 REPORTS.

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

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

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

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

(D) Information on all public outreach initiatives undertaken by the POB or the Director such as speaking engagements, public safety announcements, and/or public information

brochures on the oversight process;

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

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

(G) The amount of time that the POB dedicated to the policy activities prescribed by § 9-4-1-4(C)(5) relative to its other activities over the past quarter.

§ 9-4-1-11 EVALUATION.

Contingent upon funding, in the first six months of 2016 and at least every four years thereafter, from adoption of this ordinance, the City Council shall issue a Request for Proposal for an independent consultant to undertake a complete evaluation and analysis of the entire police oversight process, and recommend any necessary changes or amendments that would appropriately improve the process.

§ 9-4-1-12 SPECIAL MEETINGS.

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

§ 9-4-1-13 CONFIDENTIALITY.

The POB hearing process shall be open to the public to the extent legally possible so that it does not conflict with state or federal law. However, upon the opinion of the CPOA Attorney, some of the details of the investigations of the Director, or the designated independent investigator, shall become privileged and confidential. The details of investigations should not be open to the public subject to the opinion of the CPOA Attorney and the Director. Compelled statements given to the Director, or the designated independent investigator, will not be made public. The Director may summarize conclusions reached from a compelled statement for the report to the POB and the Chief of Police, and in the public record letter sent to the complainant. Nothing in this ordinance affects the ability of APD to use a compelled statement in a disciplinary proceeding.

§ 9-4-1-14 MANDATORY COOPERATION AGREEMENT.

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

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

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

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

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