



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-21-78 ENACTMENT NO. _____

SPONSORED BY: Bassan, Benton, Davis, Sena

ORDINANCE

Amending Chapter 9, Article 4, Part 1 ROA 1994, The Police Oversight Ordinance (Bassan, Benton, Davis, Sena)

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

SECTION 1. SECTION 9-4-1-1 THROUGH 9-4-1-14 ARE HEREBY AMENDED AS FOLLOWS:

“§ 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 information, reports, and data on trends and potential issues concerning police conduct and practices and the related impacts on the community and individuals; and

(E) Provide input, guidance and recommendations to the City Council, the Mayor and the Chief of Police for the development of policy for the Albuquerque Police Department.

§ 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 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 consists of the Civilian Police Oversight Agency Board (the "Board") and an Administrative Office led by the CPOA Executive Director [(the "Director" or the "Executive Director")]. The CPOA is a critical component of police reform and oversight in Albuquerque. This Ordinance is intended to comprehensively establish and set forth the CPOA, but the CPOA is also contemplated within and

bears significant duties and obligations within the 2014 DOJ Settlement Agreement with the City of Albuquerque (or any subsequent agreements), and Findings Letter of April 10, 2014 (or any subsequent findings letters)]. In addition to any other duties, the Administrative Office, through the Executive Director ~~[and staff,]~~ shall ~~[investigate~~ direct and oversee the investigation of] all civilian complaints relating to police ~~[conduct~~ misconduct], monitor and report on police internal affairs matters, provide staffing to the Board, and manage the day to day operations of the CPOA. The Board 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]~~. Board members shall rely on the CPOA professional investigative staff to perform the investigations called for under this article, and shall not independently investigate any matters before the Board.

(A) Independence. The CPOA is accountable to, but 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 §§ 9-4-1-1 through 9-4-1-14.

(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 City Hall]~~, the Police Department and/or all of the police substations.

(2) Budget. The CPOA shall have a dedicated and independent source of funding, administer its own budget in compliance with state and local laws, 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 itemized listings for 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 §§ 9-4-1-1 through 9-4-1-14 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 as part of its reporting under § 9-4-1-10.

(2) Promotion of Accountability and Impartiality. 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. The CPOA shall also promote a spirit of impartiality in its review of police conduct, and shall ensure that officer conduct is judged fairly and objectively.

(3) Investigations. The Administrative Office shall independently investigate all civilian complaints [alleging officer misconduct]; shall audit and monitor [a representative sampling of] all incidences of use of force by police and all matters under investigation by APD's Internal Affairs (IA) or other APD personnel tasked with conducting administrative investigations related to a use of force incident; and shall prepare proposed findings and recommendations on all officer involved shootings and serious uses of force as defined by Article III, Paragraph 12, Subsection (qq) (or as subsequently amended) of the court-approved DOJ Settlement Agreement with the City of Albuquerque ("Serious Uses of Force").

(a) Where an officer has engaged in conduct that may reasonably lead to a criminal charge against the officer, IA and the CPOA have a shared interest in exercising care to avoid interfering with the criminal process while simultaneously maintaining the integrity of the disciplinary process for officers. Consistent with this shared interest, IA and the CPOA will regularly confer and take reasonable steps to coordinate the handling of investigations into matters that reasonably may lead to a criminal charge against an officer. Before taking action related to a serious use of force or officer involved shooting, the 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 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 Director determines that proceeding is appropriate and will not compromise a criminal investigation. If the 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 Director may proceed only after obtaining approval to do so through a 2/3 vote of the Board. The Board shall provide notice of any such vote permitting the Director to proceed in such circumstances to APD and the police officer involved.

(b) APD shall provide Board members, the Director, and CPOA staff with reasonable access to APD premises, files, documents, reports and other materials that are reasonably necessary for the agency to perform thorough, independent investigations of civilian complaints and reviews of serious uses of force and officer-involved shootings. However, any material protected from disclosure by law shall remain within the custody and control of APD at all times and will be handled in accordance with the applicable legal restrictions.

(c) 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 Board on demand.

(d) Information that is covered by Garrity will be treated as confidential to the extent permitted by law and may only be reviewed by members of the Board by application in writing, and by majority vote of the Board. If the Board votes to review Garrity material, members of the Board may only do so on APD property. The Board may not remove or make copies of such statements. If the Board desires to discuss the specific content of statements protected by Garrity, such discussion will occur only in closed session as 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 statement, but shall not disclose the statement. The Board shall maintain the confidentiality of any Garrity material or records that are made confidential to the extent permitted 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 Board member or other person who violates the confidentiality provisions of this section 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. This provision shall apply to all aspects of the Board's work.

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

(f) **Board Audits; Access to Files.** 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, or 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 (2/3) of the members of the Board, perform an audit, or direct that an audit be performed, on any individual Citizen Police Complaint Investigation completed by the Administrative Office. For purposes of its audit function, the Board shall have full access to investigation files and may subpoena such documents and witnesses as relevant to its audit function.

(g) **Disciplinary Recommendations.** The [Board Director] 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 of officer involved shootings and serious uses of force. Imposition of the recommended discipline is at the discretion of the Chief of Police. However, if the Chief of Police does not follow the disciplinary recommendation of the [Board Director], the Chief of Police shall respond in writing, within 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. The Chief shall identify the specific findings of the [Board Director] with which the Chief disagrees, or any other basis upon which the Chief declined the [Board's Director's] disciplinary recommendation.

(h) **Summary Disposition of Complaints.** The Director shall develop

and implement a policy that specifies those complaints other than misconduct that may be resolved informally or through mediation. Administrative closing or inactivation of a complaint investigation shall be used 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.]

(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. The oral report shall at a minimum address community outreach efforts, agency progress and initiatives, [any outstanding Board vacancies and the most forthcoming term expiration(s) of any Board member(s), and the status of board members having satisfied their training requirements,] together with any of the agency's issues or concerns.

(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, analyzes and evaluates data (including APD raw data), innovative practices, national trends, and police best practices, and establishes a program of resulting policy suggestions, recommendations, and studies each year. APD shall provide Board members, the Director, and CPOA staff with reasonable access to APD premises, files, documents, reports, data (including APD raw data), and any other materials that are reasonably necessary for this purpose. For purposes of this article, "APD raw data" includes but is not limited to any facts and statistics or other data gathered, obtained, or that are otherwise within the possession of APD before being processed or analyzed; "police best practices" refers to law enforcement methods or techniques based upon the experiences and outcomes in other police departments or law enforcement agencies that have documented superior results compared to other practices, and to recommendations by recognized research and policy development groups, forums, consortiums, or similar. The CPOA shall redact any personal identification information from any APD raw data within its possession as permitted by law prior to its release to the public. The CPOA's policy recommendation process shall be as follows:

(a) Policy Recommendations Originating from the CPOA. The Board 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. Any such policy

recommendations shall be supported by specific, written findings of the Board in support of the proposed policies. The Board's policy recommendations shall be submitted to APD and to the City Council. The Board shall dedicate a majority (more than 50%) of its time to the functions described in this subsection.

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

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

(d) Within six months of its appointment, the Board shall draft and approve policies, rules and procedures that ensure that the Board is effectively accomplishing its duties under this Article.

(e) The chair of the Board shall designate one Board member to serve on each APD policy development committee. The Director and the Board member designated by the Chair 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 meeting of the Board.

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

(A) Composition. The Board 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 Board:

(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 Board, and for filling vacancies. The City Council, through its staff, shall accept applications from prospective Board 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. [Staff shall establish written policies and procedures for its administration of this process.] If a member is eligible for reappointment, that member may request reappointment without a formal application process and the City Council may reappoint accordingly. ~~[The City Council shall report out its progress on filling CPOA Board vacancies on a quarterly basis.]~~

[(D) Timeline for Filling of Vacancies. The Director shall notify the President of the City Council of a forthcoming vacancy on the Board at least sixty days prior to the expiration of a Board Member's term, and within five days of the resignation of a Board member. The City Council shall act on an appointment to fill the vacancy within sixty days of the Council President's receipt of notice from the Director. In the event that the City Council fails to act within this timeframe, the Council's staff shall transmit the pending applications of the qualified candidates to the Mayor, and the Mayor shall make an appointment to fill the vacancy from amongst the candidates.]

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

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

for removal. [

(1)]The appointment of any member who has been absent and not excused from ~~[three two]~~ consecutive regular or special meetings ~~[shall]~~ automatically ~~[expire effective terminates]~~ on the date the ~~[fact of such absence is reported by the Board to the City Clerk.~~
second absence occurs.

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

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

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

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

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

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

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

(2) Required Training. The city shall provide, and each POB member shall

complete, ~~[a training program~~ twenty-four hours of training] within the first six months of the member's initial appointment that consists, at a minimum, of the following:

- (a) Training on the 2014 DOJ Settlement Agreement with the City of Albuquerque (or any subsequent agreements), and Findings Letter of April 10, 2014 (or any subsequent findings letters);
- (b) Training on this ordinance and the duties, obligations, and responsibilities that it imposes on Board members and the CPOA;
- (c) 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, ethics;
- (d) Training on civil rights, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable uses of force;
- (e) ~~[Training on all APD policies related to use of force, including policies related to APD's internal review of force incidents;~~
- (f)] Training provided to APD officers on use of force;
- ~~[(g) Completion of those portions of the APD Civilian Police Academy that APD determines are necessary for the POB 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 POB members and shall make other aspects of the program available for POB members to complete independently;~~
- ~~(h) (f)] At least two APD ride-alongs[;~~
- ~~(i) Annual firearms simulation training;~~
- ~~(j) Internal Affairs training;~~
- ~~(k) Equity and Cultural Sensitivity training; and~~
- ~~(l) A briefing that identifies and explains the curriculum of all training currently received or anticipated to be received by APD officers, including any outside training not provided by the city].~~

(3) Required On-Going Training. Board members shall receive eight hours of annual training ~~[on~~ to include but not be limited to] any changes in law, policy, or training in the areas outlined under subsection (2) above, 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. Board members shall also participate in at least two police ride-alongs for every six-months of service on the Board.

(4) Recommended Training. Board 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. [The Director, in collaboration with the City and APD, shall maintain ongoing training opportunities for members that includes:

(a) Training on all APD policies related to use of force, including policies related to Completion of those portions of the APD Civilian Police Academy that APD determines are necessary for the POB 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 POB members and shall make other aspects of the program available for POB members to complete independently

(b) APD's internal review of force incidents;

(c) Annual firearms simulation training;

(d) Internal Affairs training;

(e) Equity and Cultural Sensitivity training; and

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

(5) The Director shall track training progress for each Board member, verify completion of the initial and on-going training requirements for each Board member, and include this information for each Board member as part of the semi-annual reports[, and quarterly oral reports] required by this article. [The Director may contract with outside, neutral trainers or training resources in order to effectively implement any of the training called for in this subsection 'F', above.]

(G) Chair. The Board 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 Board 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 Board members and no Board member shall serve on any more than two committees at any given time.

(I) Meetings. The Board shall conduct regularly scheduled public meetings in compliance with the New Mexico Open Meetings Act, with a prepared agenda that is distributed in advance to the Mayor, City Council, Police Chief, and City Attorney. Each Board meeting will begin with public comments. 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 Board 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 Board shall allow general public comment at each of its meetings, and the Board shall also allow comment on each of its agenda items other than Citizen Police Complaints. The complainant or complainant's authorized representative in a Citizen Police Complaint will be provided with a minimum of five minutes to address the Board relating to the complaint and investigation.

(J) Subpoenas.

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

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

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

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

(4) The Executive Director must obtain authorization from the Board in order to issue a subpoena. A simple majority vote of the membership of the Board in favor is required

before a subpoena may be issued.

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

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

- (a) the subpoenaed person or entity;
- (b) any individual or entity that is the subject of subpoenaed records;

and

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

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

(8) 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.

(9) In the case of a refusal to obey a subpoena issued to any person, the 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 in question.

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

(11) 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.

§ 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 article the Director shall:

(1) Independently investigate, or cause to be investigated, all civilian police complaints [alleging officer misconduct] and prepare findings and recommendations for review by the Board;

(2) Review and monitor all Internal Affairs investigations and other administrative investigations related to officer involved shooting investigations and serious uses of force investigations. The Director shall prepare ~~[and submit]~~ findings and [disciplinary] recommendations ~~[to the Board as appropriate]~~ relating to officer involved shootings and serious uses of force~~[-, and, Formal Disciplinary recommendations, if any, will be transmitted to the Chief only upon approval of the Board. The Director]~~ shall report on general trends and issues identified through monitoring or auditing of Internal Affairs;

(3) Provide staffing to the 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 Board 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, officer involved shootings, and serious uses of force shall be forwarded to [APD internal affairs and to] the Board for its ~~[review and approval. For all investigations, the information. The]~~ Director shall make recommendations and give advice regarding Police Department policies and procedures to the Board [in the context of investigative findings] as the Director deems ~~[advisable appropriate]~~.

(1) ~~[Investigation of all]~~ The review and assessment of civilian complaints filed with the CPOA shall begin immediately after complaints are filed~~[- and,]~~ [If the complaint requires investigation, it shall] proceed as expeditiously as possible, and if an investigation exceeds a timeframe of nine months [from the date the complaint was first received] the Director must report the reasons to the Board; 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 officer involved shootings and serious uses of force. 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; and

(7) If at any point during an investigation the investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the APD Internal Affairs Bureau commanding officer and transfer the administrative investigation to the Internal Affairs Bureau. The CPOA may review the IA investigation and continue processing the complaint at any time upon the conclusion of any criminal proceeding.

(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 Board meetings, publicize all findings and reports, recommendations, and/or suggested policy changes.

(F) The Director[, or the Director's designee,] 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 Board 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.

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

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

(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 at will city employee directly responsible only to the Board, to be selected, removed, or reviewed as follows:

(1) The Board, through CPOA staff, shall accept applications from candidates. The Board shall review the applications and interview candidates, and submit to the City Council the candidate that it finds to be the best qualified to be the Director. The Board'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. The Board's transmittal of its recommendation to the Council shall, at a minimum, include an evaluation of all the candidates against the provisions and requirements of this subsection 9-4-1-7 and identify in writing the basis for its selection as compared to other candidates. The City Council may decline to confirm the Board's recommended candidate only for reasonable cause, including but not limited to lack of a reasonable evaluation process, or lack of a substantive basis for the Board's recommendation.

(2) In lieu of recommending a new candidate to the Council, the Board may recommend to the Council the reconfirmation of the incumbent Director. Together with any recommendation for reconfirmation by the Board, the Board shall submit to the City Council a written basis for its recommendation to include a formal evaluation of the Director's past performance, including an evaluation against the duties established for the Director by this article. Should the Council decline to reconfirm the incumbent Director, the Council President shall notify the Board that it needs to provide the Council with an alternate candidate pursuant to the provisions of subsection (B)(1), and the Board shall so submit within 90 days of such notice. The

City Council may decline to reconfirm the incumbent Director only for reasonable cause, including but not limited to any failure to fulfill all the requirements obligations of this article, or ineffective leadership of the organization in its mission toward civilian police oversight. Should the Director not be reconfirmed or should any confirmation vote be delayed or postponed for any reason, the current Director may continue to serve in the same capacity until a new Director is selected and confirmed by the City Council. ~~[If for any reason there is a period of time during which there is no Director, the City Council may appoint a temporary Director by a majority vote. A temporary Director shall serve in that capacity only for a period not to exceed six months, during which time the Board shall work diligently to select a permanent Director.]~~

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

~~[(3)(4)]~~ The term of the Director shall be for three 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 of the members of the Board; and 2) acceptance of the Board's recommendation by a simple majority vote of the City Council.

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

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

(C) The Board shall annually review the performance of the Director taking into consideration the obligations and duties prescribed by this article and the performance of the Administrative Office. A summary of these performance evaluations shall be delivered to the Chief of Police, the Mayor, and the President of the City Council for receipt by the 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. Neither the Board nor any of its members

shall file or initiate a complaint on behalf of a member of the public. ~~[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. The Board 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 Board, 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 [or cause to be prepared] investigation reports with proposed findings and recommendations [, if any] and submit them to [civilian complainant and to] the Board for its [review and consideration information]. In addition to the findings and recommendation, each investigation report shall at a minimum also include: 1) a section outlining any relevant background and facts relating to the matter, 2) a listing of any relevant policies, procedures, or practices that are at issue, and 3) an analysis of the issues in the case. The Director may [share any submit formal] disciplinary recommendations [with to] the Chief of Police [in advance of their submission to only upon approval by] the Board [only as necessary to, but may submit them in advance for informational purposes to] help ensure timeliness pursuant to any applicable personnel or union contract requirements.

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

(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 complaint 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.

(E) After the Board has completed its review, it 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 Board and supported by the investigation file; or 3) defer action on the matter to allow for further investigation or analysis on specifically identifiable matters by the Director. As part of its review, the full investigation file shall be made available to the Board~~ decide whether or not to authorize the formal submission of the Director's disciplinary recommendations to the Chief of Police. For purposes of this vote, the Board is considering only whether to authorize the formal submission of the Director's disciplinary recommendation to the Chief. As part of this decision, the Board may consider the merits of the underlying claims, the soundness of the findings supporting the recommendation, and the justness of the recommendations].

(F) Upon approval [~~of findings and recommendations by the Board,~~] 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 [any formal disciplinary] recommendations [~~as approved~~]. Unless a hearing is requested by the civilian complainant[pursuant to Section 9-4-1-6, below], within 30 days of receipt of the decision of the Board the Chief of Police shall notify the Board and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail and as otherwise prescribed by § 9-4-1-4(C)(3)(g).

§ 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 Board of the Director~~] may request [~~reconsideration~~ a hearing] by the Board within 30 days (inclusive of weekends and holidays) of receipt of the [~~public record letter~~ investigation report]. 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; 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 Board 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 days between the receipt of the request for hearing and the next Board meeting. Any such appeals shall be reviewed in accordance with standards of conduct prescribed by § 9-4-1-8(D). Upon close of the hearing the Board 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 Board, the Chief of Police shall notify the Board and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail.

(B) Appeals of the [Final] Disciplinary Decision. If any person who has filed a civilian complaint under §§ 9-4-1-1 through 9-4-1-14 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 Board and the action of the Chief of Police by requesting such review in writing within 30 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 Board 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 Board 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);
- (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 Board 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 §§ 9-4-1-1 through 9-4-1-14, 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 11] 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 Board 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 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 State Open Meetings Act.

§ 9-4-1-[13 12] CONFIDENTIALITY.

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. However, upon the opinion of the CPOA Attorney that the law permits such action, 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 Board and the Chief of Police, and in the public record letter sent to the complainant. Nothing in this article affects the ability of APD to use a compelled statement in a disciplinary proceeding.

§ 9-4-1-[14 13] 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 Board, 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 SECTIONS 1, 2, 3, and 4 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.