

D-2016-013

CITY OF ALBUQUERQUE
CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: Richard J. Berry, Mayor

FROM: Jon K. Zaman, Director of Council Services

Jon 6/14/16

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. O-16-18 Amending Chapter 9, Article 4, Part 1 ROA 1994, The Police Oversight Ordinance (Davis, Winter), which was passed at the Council meeting of June 6, 2016, by a vote of 9 FOR AND 0 AGAINST.

In accordance with the provisions of the City Charter, your action is respectfully requested.

JKZ:dm
Attachment
6/8/16

RECEIVED
ADMINISTRATIVE SERVICES

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1 court-approved DOJ Settlement Agreement with the City of Albuquerque
2 (“Serious Uses of Force”).

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

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

33 (c) All complaints filed by police officers will be

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1 investigated by Internal Affairs. Internal Affairs shall provide a weekly update
2 to the Director on all open internal investigations. The Director's investigation
3 report and findings shall indicate whether within the past year there were any
4 IA investigations or supervisor generated complaints against the officer(s)
5 involved in the incident being investigated or that are otherwise relevant to the
6 subject matter of the investigation, the general nature of the prior
7 investigations or complaints, and whether they resulted in any discipline.
8 Redacted personnel records including those of the Internal Affairs Unit shall
9 be made available to the POB on demand.

10 (d) Information that is covered by *Garrity* will be treated as
11 confidential to the extent permitted by law and may only be reviewed by
12 members of the POB by application in writing, and by majority vote of the
13 POB. If the POB votes to review *Garrity* material, members of the POB may
14 only do so on APD property. The POB may not remove or make copies of
15 such statements. If the POB desires to discuss the specific content of
16 statements protected by *Garrity*, such discussion will occur only in closed
17 session as permitted under the New Mexico Open Meetings Act, NMSA 1978, §
18 10-15-1(H)(2). The POB shall only summarize conclusions reached after a
19 review of a *Garrity* statement, but shall not disclose the statement. The POB
20 shall maintain the confidentiality of any *Garrity* material or records that are
21 made confidential to the extent permitted by law and is subject to the same
22 penalties as the custodian of those records for violating confidentiality
23 requirements. In addition to any other penalty, any POB member or other
24 person who violates the confidentiality provisions of this section shall be
25 removed from the POB, and shall be subject to prosecution for a misdemeanor
26 subject to the penalty provisions set forth in §1-1-99. This provision shall
27 apply to all aspects of the POB's work.

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

31 (f) POB Audits; Access to Files. The POB may, by majority
32 vote, perform an annual audit, or direct that an audit be performed, on a
33 random sample of up to 10% of individual civilian police complaint

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1 investigations involving allegations of use of force, or in exceptional
2 circumstances, for the purpose of promoting an enhanced measure of quality
3 assurance in the most challenging cases the POB may, by a vote of two-thirds
4 (2/3) of the members of the POB, perform an audit, or direct that an audit be
5 performed, on any individual Citizen Police Complaint Investigation completed
6 by the Administrative Office. For purposes of its audit function, the POB shall
7 have full access to investigation files and may subpoena such documents and
8 witnesses as relevant to its audit function.

9 (g) Disciplinary Recommendations. The POB may, in its
10 discretion, recommend officer discipline from the Chart of Sanctions for
11 investigations that result in sustained civilian police complaints; and may also
12 recommend discipline based on any findings that result from review of
13 internal affairs investigations of officer involved shootings and Serious Uses
14 of Force. Imposition of the recommended discipline is at the discretion of the
15 Chief of Police, but if the Chief of Police does not follow the disciplinary
16 recommendation of the POB, the Chief of Police shall respond in writing,
17 within thirty (30) days, with the reason as to why the recommended discipline
18 was not imposed.

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

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

29 (a) The POB shall review and analyze policy suggestions,
30 analysis, studies, and trend data collected or developed by the Administrative
31 Office, and shall by majority vote recommend polices relating to training,
32 programs and procedures or other matters relating to APD. The POB's policy
33 recommendations shall be submitted to APD and to the City Council. The POB

1 shall dedicate a majority (more than 50%) of its time to the functions described
2 in this subsection.

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

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

12 SECTION 2. SECTION 9-4-1-5(F) IS HEREBY AMENDED AS FOLLOWS:

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

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

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

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

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

26 (a) Completion of those portions of the APD Civilian
27 Police Academy that APD determines are necessary for the POB to have a
28 sound understanding of the Department, its policies, and the work officers
29 perform – for purposes of this training requirement, APD shall identify those
30 portions of the standard APD Civilian Police Academy Program that are
31 optional for POB members and shall make other aspects of the program
32 available for POB members to complete independently;

33 (b) Civil Rights training, including the Fourth

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- 1 **Amendment right to be free from unreasonable searches and seizures,**
- 2 **including unreasonable use of force;**
- 3 **(c) At least two (2) APD ride-alongs;**
- 4 **(d) Annual firearms simulation training;**
- 5 **(e) Internal Affairs training;**
- 6 **(f) Training provided to APD officers on use of force,**
- 7 **including a review and familiarization with all APD policies relating to use of**
- 8 **force, and including policies related to APD’s internal review of force**
- 9 **incidents;**
- 10 **(g) Equity and Cultural Sensitivity training;**
- 11 **(h) Training on the 2014 DOJ Settlement Agreement**
- 12 **with the City of Albuquerque (or any subsequent agreements), and Findings**
- 13 **Letter of April 10, 2014 (or any subsequent findings letters);**
- 14 **(i) Training on this Police Oversight Ordinance;**
- 15 **(j) Training on state and local laws regarding public**
- 16 **meetings and the conduct of public officials; and**
- 17 **(k) A briefing that identifies and explains the**
- 18 **curriculum of all training received or to be received by APD officers, including**
- 19 **any outside training not provided by the City.**

20 **(3) Required On-Going Training. POB members shall be**

21 **provided with eight hours of annual training on any changes in law, policy, or**

22 **training in the areas outlined under subsection 2 above, as well as**

23 **developments in the implementation of the 2014 DOJ Settlement Agreement**

24 **(or any subsequent agreements) until such time as the terms of the agreement**

25 **are satisfied. POB members shall also participate in at least two police ride-**

26 **alongs for every six-months of service on the POB.**

27 **(4) Recommended Training. POB members are encouraged**

28 **to attend conferences and workshops relating to police oversight, such as the**

29 **annual NACOLE conference at City expense depending on budget**

30 **availability.”**

31 **SECTION 3. SECTION 9-4-1-6S HEREBY AMENDED AS FOLLOWS:**

32 **“§ 9-4-1-6 CPOA ADMINISTRATIVE OFFICE.**

33 **(A) The staff and administration of the CPOA shall be directed by**

1 the CPOA Executive Director (the “Director”).

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

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

7 (2) Review and monitor all Internal Affairs investigations
8 and other administrative investigations related to officer involved shooting
9 investigations and Serious Uses of Force investigations. The Director shall
10 prepare and submit findings and recommendations to the POB relating to
11 officer involved shootings and Serious Uses of Force, and shall report on
12 general trends and issues identified through monitoring or auditing of Internal
13 Affairs;

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

17 (C) The Administrative Office will receive and process all civilian
18 complaints directed against the Albuquerque Police Department and any of its
19 officers. The Director shall independently investigate and make findings and
20 recommendations for review by the POB for such civilian complaints, or
21 assign them for independent investigation by CPOA staff or an outside
22 independent investigator. If assigned to staff or an outside investigator, the
23 Director shall oversee, monitor and review all such investigations and findings
24 for each. All findings relating to civilian complaints, officer involved
25 shootings, and Serious Uses of Force shall be forwarded to the POB for its
26 review and approval. For all investigations, the Director shall make
27 recommendations and give advice regarding Police Department policies and
28 procedures to the POB as the Director deems advisable.

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

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

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

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

10 (4) The Director shall monitor all claims of officer involved
11 shootings and Serious Uses of Force. No APD related settlements in excess
12 of \$25,000 shall be made for claims without the knowledge of the Director. The
13 Director shall be an ex-officio member of the Claims Review Board; and

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

16 (6) The Director shall maintain and compile all information
17 necessary to satisfy the CPOA's semi-annual written reporting requirements in
18 § 9-4-1-10; and

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

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

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

32 (F) The Director shall play an active public role in the community,
33 and whenever possible, provide appropriate outreach to the community,

1 publicize the civilian complaint process, and identify locations within the
2 community that are suitable for civilians to file complaints in a non-police
3 environment.

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

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

15 SECTION 4. SECTION 9-4-1-8 IS HEREBY AMENDED AS FOLLOWS:

16 “§ 9-4-1-8 CIVILIAN COMPLAINT PROCEDURES.

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

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

29 (C) After the investigation of a civilian complaint is completed, the
30 Director shall analyze all relevant and material circumstances, facts and
31 evidence gathered under the investigation. For each investigation, the Director
32 shall prepare investigation reports with proposed findings and
33 recommendations and submit them to the POB for its review and

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1 consideration. The Director may share any disciplinary recommendations
2 with the Chief of Police in advance of their submission to the POB only as
3 necessary to help ensure timeliness pursuant to any applicable personnel or
4 union contract requirements. The POB shall review the proposed findings and
5 recommendations, and shall by majority vote of members present: 1) approve
6 the findings and recommendations as proposed; 2) approve other findings
7 and recommendations as determined by the POB and supported by the
8 investigation file; or 3) defer action on the matter to allow for further
9 investigation or analysis by the Director. As part of its review, the full
10 investigation file shall be made available to the POB. Upon approval of
11 findings and recommendations by the POB, the Director shall prepare and
12 submit a public record letter to the civilian complainant, with a copy to the
13 Chief of Police, that outlines the findings and recommendations as approved.
14 Unless a hearing is requested by the civilian complainant, within 30 days of
15 receipt of the decision of the POB, the Chief of Police shall notify the POB and
16 the original civilian complainant of his or her final disciplinary decision in this
17 matter in writing, by certified mail.”

18 **SECTION 5. SECTION 9-4-1-13, IS HEREBY AMENDED AS FOLLOWS:**

19 **“§ 9-4-1-13 CONFIDENTIALITY.**

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

32 **SECTION 6. SEVERABILITY CLAUSE.** If any section, paragraph, sentence,
33 clause, word or phrase of this ordinance is for any reason held to be invalid or

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1 unenforceable by any court of competent jurisdiction, such decision shall not
2 affect the validity of the remaining provisions of this ordinance. The Council
3 hereby declares that it would have passed this ordinance and each section,
4 paragraph, sentence, clause, word or phrase thereof irrespective of any
5 provision being declared unconstitutional or otherwise invalid.

6 SECTION 7. COMPILATION. The ordinance amendment prescribed by
7 SECTIONS 1, 2, 3, 4, and 5 shall amend, be incorporated in and made part of
8 the Revised ordinances of Albuquerque, New Mexico, 1994.

9 SECTION 8. EFFECTIVE DATE. This ordinance shall take effect five days
10 after publication by title and general summary.

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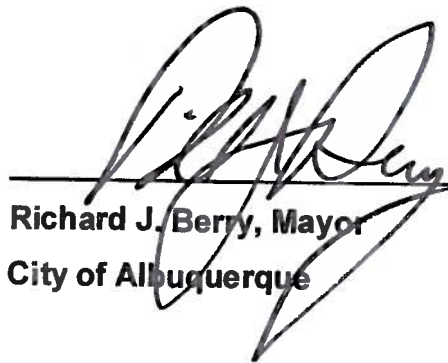
1 PASSED AND ADOPTED THIS 6th DAY OF June, 2016
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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9 **Dan Lewis, President**
10 **City Council**

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13 APPROVED THIS 22nd DAY OF June, 2016

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16 Bill No. O-16-18

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20 **Richard J. Berry, Mayor**
21 **City of Albuquerque**

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24 **ATTEST:**

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27 **Natalie Y. Howard, City Clerk**

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