

**POLICE OVERSIGHT BOARD
POLICY AND PROCEDURE REVIEW SUBCOMMITTEE**

**Thursday, September 28, 2017 – 5:00 p.m.
Plaza Del Sol Building, 600 2nd Street NW
3rd Floor Small Conference Room**

Members Present

Dr. William Kass, Chair
Susanne Brown
Valerie St. John

Others Absent

Eric Cruz

Others Present

Edward Harness, Exec. Director
Diane McDermott
Michelle Contreras

Minutes

- I. Welcome and Call to Order:** Subcommittee Chair Kass called the meeting to order at 5:00 p.m.
- II. Approval of Agenda:** Copies of the agenda were distributed. Subcommittee Member St. John made a motion to approve the agenda. Subcommittee Member Brown seconded the motion. The motion was carried by the following vote:
For- 3: Brown, Kass, St. John
- III. Approval of the Minutes:**
- A. Minutes for July 20, 2017**
- i. Members discussed the July 20, 2017 Policy subcommittee minutes.
 - ii. A motion was made by Member Brown to accept the July 20, 2017 Policy Subcommittee minutes as written. Subcommittee Member St. John seconded the motion. The motion was carried by the following vote:
For: 3 – Brown, Kass, St. John
- B. Minutes for August 17, 2017 (See appendix A attached to the August 17, 2017 Policy Subcommittee signed minutes for amendment).**
- i. Members discussed the August 17, 2017 Policy Subcommittee minutes and requested that they amend the draft minutes to reflect their vote in approving the minutes from July 20, 2017.
 - ii. A motion was made by Member Brown to approve the minutes as amended. Subcommittee Member Brown seconded the motion. The motion was carried by the following vote:
For -3: Brown, Kass, St. John

IV. Public Comments

- A.** Chair Kass attempted to call Mr. Dan Cline from the Albuquerque Free Press, but there was no answer. If Mr. Cline calls during the meeting, they will stop their discussion and take Mr. Cline's call for his public comment.

V. Discussion:

- A.** Presentation and discussion of policy recommendation framework adopted by the Police Oversight Board.

- i. **POB Policy Process Flow chart.** Policy Subcommittee Chair Kass distributed and discussed the flow chart titled "POB Policy Process." See attachment "A."
- ii. A motion was made by Member Brown that we [the Policy Subcommittee] follow through on the suggestions that Dr. Kass came to us [the POB] with and try it over again and see if it works [a policy] coming through Standard Operating Review Committee (SOPRC). Obviously, it did not work coming through Office of Policy Analysis (OPA). The first topic has been related to enter the process through SOPRC, that's what I like to make a motion that we enter with the new suggestion for where we should enter [the POB to enter as it relates to policy review] and revisit boxes 4 and 5. Member St. John seconded the motion. The motion was carried by the following vote:

For: 3 – Brown, Kass, St. John

- iii. **Green boxes 4 and 5, revisited.** Members discussed boxes 4 and 5 of the flow chart. Box 4 becomes: Policy comes to the POB and box 5 becomes: Policy comes to SOPRC.

- iv. **POB Policy Recommendation Process (Steps).** Policy Subcommittee Chair Kass distributed and discussed the untitled document which contains the steps for the POB policy process. **See attachment "B."**

- a. Members discussed and came to an agreement on the revised flow chart.

- v. A motion was made by Member Brown that step 4 of the flow chart will reflect that the researched and vetted policy will be presented to the [POB] board for approval and that policy, if approved by the [POB] board, will be presented to the SOPRC. Member St. John seconded the motion. The motion was carried by the following vote:

For: 3 – Brown, Kass, St. John

- B.** Discussion of new policy recommendation to APD to identify points of contact and deliverables identified in the Police Oversight Ordinance.

- i. Subcommittee Chair discussed that this item is just for informational purposes and will be discussed at a future working group meeting.

- ii. Director Harness clarified that 30 or so APD obligations under the ordinance would be highlighted and a position within APD would be responsible for that particular point within the ordinance so whenever questions come up under the particular obligation, that person would be contacted for answers.
- iii. Discussion was had regarding the oversight ordinance, which is currently out for comment and once it comes back from comment (by APD, APOA, City Legal), then Mr. Moya will look for a sponsor for it.

VI. Report from CPOA

A. Report from CPOA Director Edward Harness. Director Harness distributed the Standard Operating Procedure 3-44: Review of Completed Administrative Investigation Cases. **See attachment "C."**

- i. A discussion was had regarding that SOP 3-44, which is a starting point to write in some of the obligations from the ordinance.

Action item: Subcommittee Chair asked the Subcommittee Members to take a look at the policy 3-44 and try to see where they can fit the ordinance requirements into this policy.

B. HR Promotion Policy. The HR Promotion policy is in a court mandated process it will come back into the regular process for the POB to have access to it.

C. Board Member Garcia resigned from the POB for health reasons.

D. Director Harness did three training sessions with the Emergency Communications Center on Tuesday, September 26, 2017 where he taught the staff about the POB and police oversight. Members can contact Erica Wilson at the ECC to schedule a sit along with the Communication staff to see how they do their jobs.

VII. Other business. None.

VIII. Next Meeting: The next Policy and Procedure Subcommittee is scheduled for Thursday, October 26, 2017 at 5:00 p.m.

IX. Adjournment: Subcommittee Member Brown made a motion to adjourn the meeting. Subcommittee Member St. John seconded the motion. The motion was carried by the following vote:

For: 3 – Brown, Kass, St. John

Meeting adjourned at 6:37 p.m.

Approved by:
William Kass, Chair
Policy Review Subcommittee

Date

CC: Julian Moya, City Council Staff
Natalie Y. Howard, City Clerk
Isaac Benton, City Council President

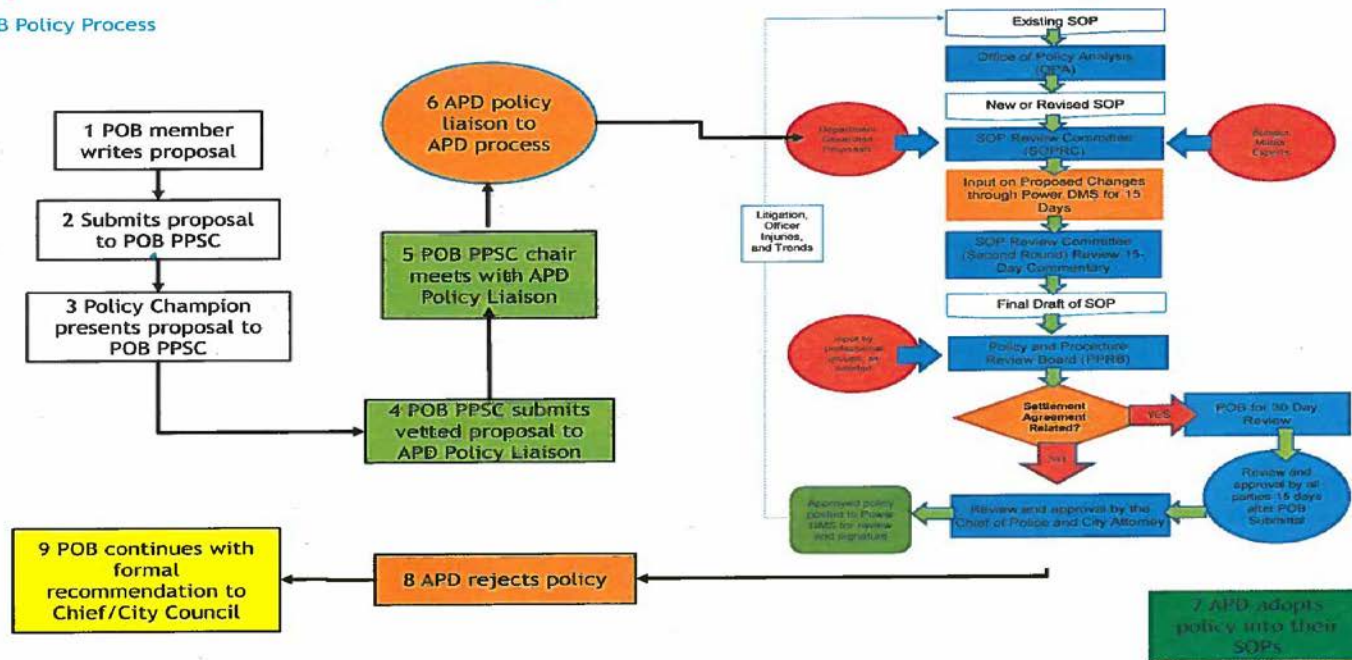
Minutes drafted and submitted by:
Michelle Contreras, Senior Administrative Assistant

DRAFT

Attachments

DRAFT

POB Policy Process



Attachment “A”

As one way of satisfying the oversight ordinance requirement to devote at least half of our POB effort to policy recommendations, I propose creating a defined POB policy recommendation process that complies with the sense of the ordinance and that we can integrate with the APD process.

A few words about the proposed process –

Steps 1 -3 allow the POB to have some ideas for APD policy, research them and then vet them within the POB before presenting them to APD. However, APD does have data and information to which we need access in order to write good recommendations. (This is one of the areas that will be addressed in the second task described in this message.)

Steps 4 and 5 alert APD that we want to make changes but we rely on APD to make good faith recommendations based on their knowledge of what is covered in their existing SOPs and then allow the principal points of contact at POB and APD exchange information. I think these steps are important because it puts us on level playing field with APD to change APD policy but these steps are not yet defined at APD.

Steps 6 and 7 represent the existing APD policy process.

Step 8 is what is described in the POO that allows us to submit policy recommendations to the Chief and City Council. The difference is that we would have vetted our proposal through APD, gathered more information, did our due diligence, recognized APD's position and objections and we still think our recommendation has merit.

The task that I am asking of all POB members is to comment on this proposal since whatever process is created will be owned by the POB. I would like to hear all suggestion, comments and criticisms so we can move forward with this and report the status at the September 21 POB meeting. If you choose not to comment, I will assume you accept this proposal more or less as presented. I assume it is the POB chair's decision when to hold a vote to adopt this process.

POB Policy Recommendation Process

STEP 1 POB member sees need for a new policy, conducts some preliminary research, makes observations, writes a proposal and becomes the Policy Champion for this policy.

STEP 2 Policy Champion submits proposal to Policy Subcommittee Chair who will circulate the proposal as a draft for review and comment by all POB members.

STEP 3 Policy champion presents proposal and supporting information (motivation to add or change APD policy, current APD policy, best practices, observations, ...) to POB Policy subcommittee for further review and discussion.

STEP 4 Policy proposal including POB subcommittee edits is forwarded to APD policy point of contact for their review.

Attachment "B"

STEP 5 POB subcommittee chair and policy champion schedule a meeting with APD process point of contact to discuss proposal and exchange information about known applicable processes.

STEP 6 APD includes POB request into their own policy process, - OPA, PPRB, which allows POB to defend/discuss these changes to APD and subject matter experts.

STEP 7 APD can proceed to adopt the policy recommendations within their normal process and we are done

STEP 8 If APD rejects policy changes, POB can still proceed to write a formal recommendation to the Chief/City Council incorporating the objections of APD into the proposal.

The second task is to test this proposed policy recommendation process with a draft policy recommendation to APD that describes how APD will cooperate with the POB to incorporate POB policy recommendations. This becomes a somewhat circular process.

The proposed policy is based on the oversight ordinance (Police Oversight Ordinance Cooperation-policy -feel free to suggest another name). The ordinance requires APD to cooperate with the CPOA/POB in several areas and this POOC proposal asks APD to define how they will cooperate by providing points of contact (positions within APD – not just the name of the current occupant of that position and not just one point of contact for all POB interactions) for each of the areas of cooperation and a description of what those points of contact are responsible for regarding the related POB/CPOA activity. I am not trying to write detailed APD SOPs, but rather I want to propose a framework for interactions between CPOA and APD where APD fills in the details by writing their SOPs. The POB will have representation at the OPA and PPRB meetings where these details will be discussed and we will be available to answer questions.

I have attached a draft of the POOC recommendation and some supporting information that has previously been presented at the Policy subcommittee, and I am now submitting it to the POB for review – essentially completing steps 1 and 2 of the POB Policy recommendation process. This can also serve as an example of a policy recommendation request.

If we follow the proposed recommendation process, we can carry this through the first few steps to the point where we submit it to their point of contact (step 4) who is as yet not formally defined. At this time we have a defined APD liaison, Major Jessica Tyler, but this POOC recommendation requests points of contact for each of the activities described in the attached ordinance analysis.

In summary, I am asking for your comments on the draft policy process and your input on the draft POOC policy.

Attachment “B”

POB Policy Recommendation

Title: Police Oversight Ordinance Cooperation

Reason for proposal:

The Police Oversight Ordinance (POO) establishes the purpose of the Civilian Police Oversight Agency and defines its powers. The CPOA was created to be independent of the APD, the Office of the Mayor and the City Council. The CPOA is accountable to the community and must periodically report its activity to city government.

While the CPOA is independent from the Albuquerque Police Department, the ordinance requires APD to cooperate with the CPOA in order for the CPOA to carry out its purpose while maintaining its independence and oversight function.

Description of Policy recommendation:

This new policy would define the role of APD in their relationship to the CPOA and POB. It consists of the following POB activity areas determined by the POO ordinance requirements:

Citizen complaints: Identify points of contact in APD for transmitting the various types of information which are shared between APD and CPOA for the purpose of resolving citizen complaints. The individual mentions can be found in the attached table.

Community Outreach: Identification of APD point of contact to inform POB of community activities which might naturally include POB input.

Policy: Define committee participation in APD policy development process, identify APD policy point of contact for CPOA

Access to APD Data and Premises: Identify a point of contact for data access, point of contact for access badges, point of contact for access to APD documents requested in the CPOA audit process, identify all memberships in review boards.

POB Training: Identify points of contact for various defined training provided by APD, describe process for requesting ride-alongs, identify records of POB verifying completion of training, background checks. Create and maintain a schedule and course description of Citizen Police Academy specifically for POB members.

Applicable SOPs: None known

Submitter: William J. Kass, Policy Subcommittee Chair, POB member

Attachment “B”

POB Policy Recommendation Process

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Attachment “B”



ALBUQUERQUE POLICE DEPARTMENT
ADMINISTRATIVE ORDERS

SOP 3-44

Effective: 06/16/16 Expires: 12/13/16 Replaces: 03/16/11

**3-44 REVIEW OF COMPLETED ADMINISTRATIVE INVESTIGATION
CASES**

3-44-1 Purpose

This policy details the process that occurs upon the completion of an administrative misconduct investigation. It also sets out the procedure for reviewing a serious use of force investigation only for the purpose of imposing discipline. For a general review of use of force administrative investigations, refer to the Use of Force Reporting and Supervisory Force Investigation Requirements SOP and the Force Review Board SOP.

3-44-2 Policy

To maintain constitutional and effective policing, and to promote officer safety and accountability, the Department ensures that all findings in administrative misconduct investigations are supported by the appropriate standard of proof. The Department reviews recommendations from the Civilian Police Oversight Agency (CPOA) and the chain of command and ensures that an officer who commits misconduct is held accountable in a fair, consistent system of discipline.

- 1 -

Attachment "C"



ALBUQUERQUE POLICE DEPARTMENT
ADMINISTRATIVE ORDERS

SOP 3-44

Effective: 06/16/16 Expires: 12/13/16 Replaces: 03/16/11

3-44-3 Definitions

A. Bureau Head

This is a Deputy Chief or Major responsible for overseeing a Bureau within the department.

B. Chart of Sanctions

This is a matrix listing disciplinary sanctions based on the level of offense and the number of offenses committed within a given time period. The Chart of Sanctions is part of the Discipline System SOP. The chart identifies the specific violation and disciplinary penalty if there is culpability.

C. CIRT

Acronym for Critical Incident Response Team

D. Civilian Police Complaints (CPCs)

Civilian police complaints are complaints originating externally from non-Department personnel.

E. Civilian Police Oversight Agency (CPOA)

This is an independent entity created by city of Albuquerque municipal ordinance Section 9-4-1 through 9-4-14 to provide an effective civilian oversight function for the Albuquerque city police so as to promote police officer accountability and to protect rights of Albuquerque's citizens. It maintains operational independence from both the City Council and the City of Albuquerque's administration, and is charged with the responsibility of investigating all citizen complaints concerning police conduct.

F. Clear and Convincing Standard

A fact is established by a clear and convincing standard when the fact is highly and substantially more probable to be true than not and the reviewer must have a firm belief or conviction in its factuality.

G. Division Head

This is a Commander or civilian equivalent responsible for overseeing and operating a Department Division.

H. IAS

Acronym for Internal Affairs Section.

- 2 -

Attachment "C"



ALBUQUERQUE POLICE DEPARTMENT
ADMINISTRATIVE ORDERS

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Effective: 06/16/16 Expires: 12/13/16 Replaces: 03/16/11

I. OIS

Acronym for officer involved shooting.

J. Preponderance of Evidence

A fact is established by a preponderance of evidence when it is shown that the fact is more likely true than not true. Preponderance means the greater weight of evidence, taking into consideration the quality and persuasiveness of the evidence, not the number of witnesses or exhibits.

Attachment "C"



ALBUQUERQUE POLICE DEPARTMENT
ADMINISTRATIVE ORDERS

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3-44-4 Procedures

5

A. Timelines

An investigation conducted by the IAS or the by CPOA is completed within 90 days following initiation of the complaint investigation. The 90-day period does not include review time. An extension of time for completion of the investigation may be granted for a maximum of 30 days. The request for an extension must be in writing and approved by the Chief. Review and final approval of the investigation, and the determination and imposition of the discipline, is made within 30 days following completion of the investigation. An extension may be granted in extenuating circumstances, such as military deployments, officer hospitalizations, and extended absences, upon agreement by the Chief of Police or his designee and the employee or his/her representative.

B. Types of Investigations and Process

The process for review of an investigation depends on the type of complaint and the nature of the investigation.

1. An administrative Investigation of Civilian Police Complaints (CPCs)

CPCs are investigated by the CPOA and forwarded to IAS to initiate a review by the chain of command and if the complaint is sustained, to impose discipline.



2. Administrative Investigations of Misconduct (other than a serious use of force)

An administrative investigation of misconduct that does not involve a serious use of force is investigated by IAS (or the chain of command in cases of minor misconduct) and reviewed by the chain of command before the Chief or designee imposes appropriate discipline, if discipline is warranted.



Attachment "C"



ALBUQUERQUE POLICE DEPARTMENT
ADMINISTRATIVE ORDERS

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3. An administrative Investigation of Serious Use of Force (including OIS)

A serious use of force is investigated by CIRT. The IAS handles all aspects of the investigation relating to the imposition of discipline. A serious use of force investigation is forwarded to the CPOA for review and a recommendation as to discipline if discipline is warranted. The CPOA returns its recommendation to IAS for review by the chain of command and imposition of appropriate discipline by the Chief or designee.



C. Role of Internal Affairs Section in Case Review

IAS is the record-keeper of administrative investigation records. IAS is the point of contact with the CPOA to ensure consistency and proper tracking of the investigation. Upon completing the review of the administrative investigation, IAS updates required information into the early intervention system. Upon receipt of the final decision from the chain of command, IAS takes appropriate steps to impose discipline if discipline is warranted.

D. Review by CPOA Executive Director

1. The CPOA's review of investigations is not governed by this policy but instead by Section 9-4-1 Revised Ordinance of Albuquerque (1994) and CPOA Policies & Procedures. This policy discusses CPOA's review process for informational purposes and because of how that process impacts APD's functions and responsibilities.
2. The CPOA Executive Director reviews CPC investigations by CPOA investigators and CIRT investigations of serious use of force (including OIS cases).
3. The CPOA Executive Director proposes findings and recommendations regarding discipline against an officer involved in the incident. The Police Oversight Board reviews and makes a final decision adopting or rejecting the proposed findings and recommendation for discipline to the Chief.
4. The CPOA Executive Director routes the case and Police Oversight Board's decision and recommendation to IAS.

E. Review by Chain of Command

1. All investigatory cases, once completed by a supervisor, IAS and/or CPOA, will be forwarded to the investigated employee's Division Head for review.
2. The Division Head reviews the SOP sections which refer to the alleged misconduct and may add additional SOP sections if appropriate.

- 5 -

Attachment "C"



ALBUQUERQUE POLICE DEPARTMENT
ADMINISTRATIVE ORDERS

SOP 3-44

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3. The investigated employee's Division Head notes whether the Division Head does or does not concur that the findings are supported by a preponderance of the evidence (or for findings that allegations are unfounded, a clear and convincing standard). For investigations in which CPOA recommends discipline, the Division Head notes whether he or she agrees with the CPOA's recommended discipline. For other cases, the Division Head recommends discipline based on the Chart of Sanctions. The Division Head consults with other members of investigated employee's chain of command regarding recommendations.
 - a. The Division Head lists and considers all mitigating and aggravating circumstances.
 - b. If the Division Head recommends discipline that deviates from the Chart of Sanctions, the Division Head includes a detailed justification for the recommended deviation.
 - c. The Division Head considers whether non-disciplinary corrective action, such as counseling or re-training is also appropriate.
 - d. The Division Head ensures that the investigation and report is complete, thorough, and impartial. If it is not, the Division Head will articulate any problems and send the case back to the investigator to address deficiencies.
 - e. The Division Head forwards this recommendation, attached to the completed file, to the appropriate Bureau Head.
 - f. The Bureau Head reviews the file and recommendation regarding findings and discipline.
 - g. The Bureau Head ensures that the investigation and report is complete, thorough, and impartial. If it is not, the Bureau Head will articulate any problems and send the case back to the Division Head to address deficiencies.
 - h. The Bureau Head makes the final decision regarding findings and discipline if he/she determines that the appropriate level of discipline is a level less than or equal to a 39-hour suspension, unless this decision is inconsistent with the IAS's findings or with CPOA's findings and recommendation.
 - i. If the appropriate level of discipline is equal to or greater than a 40-hour suspension, or if the Bureau Head's decision is inconsistent with the findings of IAS or with the findings and recommendation of the CPOA, the final decision is made by the Chief or Assistance Chief, as explained below.
 - j. If the Bureau Head issues a final decision, he/she routes the file and decision to IAS for its records and imposition of discipline if warranted.
 - k. If the Bureau Head does not issue a final decision, he/she indicates concurrence or non-concurrence with the proposed findings and recommendation and forwards the file to the Chief or Assistant Chief for final disposition. The Bureau Head ensures that the file includes appropriate documentation regarding any mitigating and aggravating circumstances, deviations from the Chart of Sanctions, and any disagreement with IAS's or CPOA's findings or recommendation for discipline.

Attachment "C"



ALBUQUERQUE POLICE DEPARTMENT
ADMINISTRATIVE ORDERS

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F. Review by the Chief or Assistant Chief

1. For all cases in which the Bureau Chief does not issue a final decision, the Chief or Assistant Chief reviews the complete file and recommendations regarding findings and discipline. The Chief or Assistant Chief makes the final determination about findings and the appropriate level of discipline.
2. The Chief or Assistant Chief ensures that any mitigating and aggravating circumstances and any deviations from the Chart of Sanctions are documented appropriately.
3. The Chief or Assistant Chief ensures that the investigation and report is complete, thorough, and impartial. If it is not, the Chief or Assistant Chief will articulate any problems and send the case back to the Bureau Head to address deficiencies.
4. The Chief or Assistant Chief routes the file and decision to IAS for its records and imposition of discipline.
5. The Chief has discretion over, and whether, and at what level to impose discipline. If the Chief's decision differs from the CPOA's recommendation, the Chief sends a memo to the CPOA Executive Director within 30 days of the CPOA's recommendation, explaining the reasons the recommendation was not followed.

G. Confidentiality and Access

1. Supervisors are responsible for the security and confidentiality cases reviewed which are in their possession.
 - a. The cases and records are stored in secure area, such as a locked drawer or locked office, when not being reviewed.
 - b. Individuals outside the chain of command are prohibited from viewing cases and records. Employees are prohibited from releasing information about these cases outside the chain of command, except for IAS and Records employees who consult with the Legal Department.
2. An employee may review his/her own case file in IAS by contacting IAS.

Attachment "C"