Attachment A

Enabling statutes for County of San Diego Citizens Law Enforcement Review Board.

ARTICLE XVIII

CITIZENS LAW ENFORCEMENT REVIEW BOARD*

***Editor's note** -- Article XVIII, Citizens Law Enforcement Review Board, sections 340--340.15, added by Ord. No. 7880 (N.S.), effective 5-2-91.

Cross reference(s) -- Definitions, § 20 et seq.; general rules, § 50 et seq.

SEC. 340. PURPOSE AND INTENT.

It is the purpose and intent of the Board of Supervisors to establish a Citizens Law Enforcement Review Board of the County of San Diego to advise the Board of Supervisors, the Sheriff and the Chief Probation Officer on matters related to the handling of citizen complaints which charge peace officers and custodial officers employed by the County in the Sheriff's Department or the Probation Department with misconduct arising out of the performance of their duties. The Citizens Law Enforcement Review Board is also established to receive and investigate specified citizen complaints and investigate deaths arising out of or in connection with activities of peace officers and custodial officers employed by the County in the Sheriff's Department or the Probation Department. In addition, the Citizens Law Enforcement Review Board is to make appropriate recommendations relating to matters within its jurisdiction, report its activities, and provide data in respect to the disposition of citizen complaints received by the Citizens Law Enforcement Review Board. It is the purpose and intent of the Board of Supervisors in constituting the Citizens Law Enforcement Review Board that the Review Board will be advisory only and shall not have any authority to manage or operate the Sheriff's Department or the Probation Department or direct the activities of any County officers or employees in the Sheriff's Department or the Probation Department. The Review Board shall not decide policies or impose discipline against officers or employees of the County in the Sheriff's Department or the Probation Department.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.1. CITIZENS LAW ENFORCEMENT REVIEW BOARD.

The Board of Supervisors hereby establishes the Citizens Law Enforcement Review Board of the County of San Diego, hereinafter referred to as "Review Board."

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.2. NUMBER OF MEMBERS.

The Review Board shall consist of eleven (11) members.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.3. NOMINATION AND APPOINTMENT.

(a) The Board of Supervisors shall appoint all eleven members to the Review Board, all of whom shall be residents and qualified electors of the County. Members shall be nominated by the Chief Administrative Officer. In making nominations the Chief Administrative Officer shall attempt to reflect in Review Board membership

comprehensive representation of age, sex, socioeconomic status, racial and ethnic background and geographical distribution, including representation of both the unincorporated areas and the cities that contract with the County for law enforcement by the Sheriff's Department. The list of nominees submitted to the Board of Supervisors shall include a statement of the qualifications of each person nominated.

(b) Public notice and publicity shall be given of intention to appoint members to the Review Board. An application form shall be provided to members of the public.

(c) County employees and persons employed as peace officers and custodial officers shall not be eligible to be members of the Review Board.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

Cross reference(s) -- Chief administrative officer, § 120 et seq.; appointment and removal, § 52; sheriff, § 440 et seq.

SEC. 340.4. TERM OF OFFICE.

(a) Each member shall serve a term of three years; provided, however, that the terms of the initial members of the Review Board shall be determined as follows:

At the first meeting of the Review Board, the eleven members shall draw lots to determine which four members will serve a three year term, which four members will serve a two year term, and which three members will serve a one year term.

(b) A member shall serve on the Review Board until a successor has been appointed. A member shall be appointed for no more than two consecutive full terms. Appointment to fill a vacancy shall constitute appointment for one term. The term for all members shall begin on July 1 and end on June 30. The term of all persons who are the initial appointees to the Review Board shall be deemed to commence on July 1, 1991.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.5. REMOVAL.

Members of the Review Board serve at the pleasure of the Board of Supervisors and may be removed from the Review Board at any time by a majority vote of the Board of Supervisors.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.6. VACANCIES.

A vacancy shall occur on the happening of any of the following events before the expiration of the term:

(1) The death of the incumbent.

(2) The resignation of the incumbent.

(3) The ceasing of the incumbent to be a resident of the County of San Diego.

(4) Absence of the member from three consecutive regular meetings of the Review Board, or

(5) Failure to attend and satisfactorily complete the required training course within three months of the beginning of a member's term or of the member's appointment to fill a vacancy.

When a vacancy occurs the Board of Supervisors and, where appropriate, the member shall be notified of the vacancy by the Chairperson. Vacancies shall be filled in the same manner as the position was originally filled. Vacancies shall be filled within forty-five days and, subject to the provisions of this article, shall be filled for the balance of the unexpired term.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.7. ORGANIZATION.

(a) *Officers.* The Review Board shall select annually from its membership a Chairperson, a Vice-Chairperson and a Secretary.

(b) *Rules.* The Review Board shall prepare and adopt necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors. A current copy of the rules and regulations shall be filed with the Clerk of the Board of Supervisors.

(c) *Quorum.* A majority of members currently appointed to the Review Board shall constitute a quorum. A majority of members currently appointed to the Review Board shall be required to carry any motion or proposal.

(d) *Minutes.* The Review Board shall keep written minutes of its meetings, a copy of which shall be filed with the Clerk of the Board of Supervisors.

(e) *Meetings.* The Review Board shall establish a regular meeting schedule and shall give public notice of the time and place of meetings. All meetings shall be held in

accordance with the requirements of the Ralph M. Brown Act (Government Code, section 54950 et seq.).

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.8. COMPENSATION.

Members of the Review Board shall serve without compensation, except they shall be reimbursed for expenses incurred in performing their duties in accordance with provisions of the County Administrative Code regulating reimbursement to County officers and employees.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.9. DUTIES AND RESPONSIBILITIES.

The Review Board shall have the authority to:

(a) Receive, review and investigate citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department which allege: (A) use of excessive force; (B) discrimination or sexual harassment in respect to members of the public; (C) the improper discharge of firearms; (D) illegal search or seizure; (E) false arrest; (F) false reporting; (G) criminal conduct; or (H) misconduct. The Review Board shall have jurisdiction in respect to all citizen complaints arising out of incidents occurring on or after November 7, 1990; provided, however, that the Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the time duration of such incarceration or physical or mental incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. All action complaints shall be in writing and the truth thereof shall be attested under penalty of perjury. "Citizen complaints" shall include complaints received from any person whatsoever without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant. "Misconduct" is defined to mean and include any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen by reason of:

1. An alleged violation of any general, standing or special orders or guidelines of the Sheriff's Department or the Probation Department; or

2. An alleged violation of any state or federal law; or

3. Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department.

The Review Board shall have no authority pursuant to this subdivision to take action in regard to incidents for which no citizen complaint has been filed with the Review Board.

(b) Review and investigate the death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, regardless of whether a citizen complaint regarding such death has been filed with the Review Board. The Review Board shall have jurisdiction in respect to all deaths of individuals coming within the provisions of this subdivision occurring on or after November 7, 1990; provided, however, that the Review Board may not commence review or investigation of any death of an individual coming within the provisions of this subdivision more than one year after the date of the death, unless the review and investigation is commenced in response to a complaint filed within the time limits set forth in subdivision (a) of this section.

(c) Prepare reports, including at least the Sheriff or the Probation Officer as recipients, on the results of any investigations conducted by the Review Board in respect to the activities of peace officers or custodial officers, including recommendations relating to the imposition of discipline, including the facts relied on in making such recommendations, and recommendations relating to any trends in regard to employees involved in citizen complaints. The Review Board is not established to determine criminal guilt or innocence.

(d) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Probation Officer summarizing the activities and recommendations of the Review Board including the tracking and identification of trends in respect to all complaints received and investigated during the reporting period.

(e) Notify in writing any citizen having filed a complaint with the Review Board of the disposition of his or her complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of citizen complaints. Such notifications shall be in writing and shall contain the following statement: "In accordance with Penal Code section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of California or the United States."

(f) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.

(g) Review and make recommendations on policies and procedures of the Sheriff's Department and the Probation Departments to the Board of Supervisors, the Sheriff, and the Chief Probation Officers.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91; amended by Ord. No. 7914 (N.S.), effective 6-27-91; amended by Ord. No. 9737 (N.S.), effective 10-27-05; amended by Ord. No. 9782 (N.S.), effective 7-20-06)

Cross reference(s) -- Powers and duties of officers, boards, and commissions, § 51.

SEC. 340.10. REVIEW BOARD INVESTIGATIONS.

Citizen complaints received by the Review Board shall be transmitted forthwith to the Sheriff or the Probation Officer.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.11. SUBPOENAS.

The Review Board shall, pursuant to the Charter of the County of San Diego, section 606(d), have the power to subpoena and require attendance of witnesses and the production of books and papers pertinent to its investigations and to administer oaths.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.12. STAFF ASSISTANCE.

The Review Board shall appoint such personnel as may be authorized by the Board of Supervisors.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.13. TRAINING REQUIREMENTS.

All members shall attend and satisfactorily complete a training course within three months of the beginning of the member's term or of the member's appointment to fill a vacancy. The training requirements shall be established by the Chief Administrative Officer. Failure to attend and satisfactorily complete the training course within the prescribed time shall result in the member's removal from the Review Board and shall automatically create a vacancy on the Review Board.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.14. RECORDS.

Any personnel records, citizen complaints against County personnel in the Sheriff's Department or the Probation Department, and information obtained from these records, which are in the possession of the Review Board or its staff, shall be confidential and shall not be disclosed to any member of the public, except in accordance with applicable law. Copies of records and complaints of the Review Board shall be made available to the Sheriff or the Probation Officer upon completion of the investigation of the Review Board unless prohibited by applicable law.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

SEC. 340.15. COOPERATION AND COORDINATION.

In the discharge of its duties, the Review Board shall receive complete and prompt cooperation from all officers and employees of the County. The Review Board and other public officers, including the Sheriff, the District Attorney, and the Grand Jury, shall coordinate their activities so that the other public officers and the Review Board can fully and properly perform their respective duties.

(Added by Ord. No. 7880 (N.S.), effective 5-2-91)

Section 606: Citizens Law Enforcement Review Board.

(a) The Board of Supervisors, by ordinance, shall establish a Citizens Law Enforcement Review Board consisting of not less than nine (9) nor more than fifteen (15) members nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. Members of the Citizens Law Enforcement Review Board shall serve without compensation for terms not to exceed three years as established by ordinance, and members shall be appointed for not more than two consecutive full terms. County employees and persons employed as peace officers or custodial officers shall not be eligible to be members of the Citizens Law Enforcement Review Board.

(b) Members of the Citizens Law Enforcement Review Board shall serve at the pleasure of the Board of Supervisors, and they may be removed at any time by a majority vote of the Board of Supervisors.

(c) Vacancies on the Citizens Law Enforcement Review Board shall be filled for the balance of the unexpired term in the same manner as the position was originally filled.

(d) The Citizens Law Enforcement Review Board shall have the power to subpoena and require attendance of witnesses and the production of books and papers pertinent to its investigations and to administer oaths.

(e) The Citizens Law Enforcement Review Board may appoint in accordance with its established procedures such personnel as may be authorized by the Board of Supervisors. Notwithstanding any other provision of this Charter, any authorized executive director and investigators of the Citizens Law Enforcement Review Board shall be in the classified or the unclassified service as determined, by ordinance, by the Board of Supervisors.

(f) The Board of Supervisors, by ordinance, shall establish the duties of the Citizens Law Enforcement Review Board and its duties may include the following:

(1) Receive, review and investigate citizens complaints which charge peace officers or custodial officers employed by the Sheriff's Department or the Probation Department with (A) use of excessive force, (B) discrimination or sexual harassment in respect to members of the public, (C) the improper discharge of firearms, (D) illegal search or seizure, (E) false arrest, (f) false reporting, (G) criminal conduct or (H) misconduct. All action complaints shall be in writing and the truth thereof shall be attested under penalty of perjury. "Misconduct" is defined to mean and include any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen by reason of:

1. An alleged violation of any general, standing or special orders or guidelines of the Sheriff's Department or the Probation Department; or

2. An alleged violation of any state or federal law; or

3. Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department.

(2) Review and investigate the death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the Sheriff's Department or the Probation Department, regardless of whether a citizen complaint regarding such death has been filed with the Citizens Law Enforcement Review Board.

(3) Prepare reports, including at least the Sheriff or the Probation Officer as recipients, on the results of any investigations conducted by the Citizens Law Enforcement Review Board in respect to the activities of peace officers or custodial officers, including recommendations relating to the imposition of discipline and recommendations relating to any trends in regard to employees involved in citizen complaints.

(4) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Probation Officer summarizing the activities and recommendations of the Citizens Law Enforcement Review Board, including the tracking and identification of trends in respect to all complaints received and investigated during the reporting period.

(5) Notify in writing any citizens having filed a complaint with the Citizens Law Enforcement Review Board of the disposition of his or her complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of citizen complaints.

(6) Review and make recommendations on policies and procedures of the Sheriff and the Probation Officer.

(7) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.

(8) Perform such other duties as the Board of Supervisors, by ordinance, may assign to the Citizens Law Enforcement Review Board.

(9) Established rules and procedures for receipt of complaints from detention facility inmates.

(g) In the event that a County Department of Corrections is established, the Citizens Law Enforcement Review Board shall have the same powers and duties in respect to that Department, its Director, and its peace officer and custodial officer employees, as the Citizens Law Enforcement Review Board has in respect to the Sheriff, the Probation Officer and their departments and employees. (Added, Effective 12-26-90)

Attachment B

Enabling statutes for City of Albuquerque, New Mexico, Police Oversight Commission

Police Oversight Commission Ordinance

PART 1. POLICE OVERSIGHT COMMISSION

CITY of ALBUQUERQUE

SIXTEENTH COUNCIL

COUNCIL BILL NO. O-04-14 ENACTMENT NO._____

SPONSORED BY: Brad Winter

ORDINANCE

Amending Chapter 9, Article 4, Part 1 ROA 1994, The Police Oversight Ordinance, Increasing The Number Of Commissioners To Nine, Increasing The Representation Of Commissioners To Include A Representative From Each City Council District; Changing The Minimum Qualifications Of Commissioners, Clarifying Procedures For Findings On Investigations, Changing The Term Of The Independent Review Officer; Creating A Hearing Process For Non-Concurrence Issues; And Amending The Appeal Process

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

Section 1. Section 9-4-1-4 ROA 1994 is amended as follows

"There is hereby created a Police Oversight Commission (POC) to provide oversight of the Albuquerque Police Department and oversee all citizen complaints as follows

(A) The POC shall be composed of nine members who broadly represent the diversity of this community, and who reside within the City of Albuquerque. There shall be one member of the Police Oversight Commission representing each City Council District. This policy shall be implemented as vacancies occur subsequent to the adoption of this ordinance with the exception of Commissioners currently serving on the POC who may be reappointed for a second term by the Mayor regardless of the Council District they represent

(B) The following are the minimum qualifications for members of the Police Oversight Commission

(1) Have not been employed by law enforcement for one year prior to appointment, and

(2) Problem solving and conflict resolution skills; and

(3) Attend a yearly four-hour civil rights training session to be conducted by a civil rights attorney or advocacy group; and

(4) A willingness to commit the necessary time each month for POC hearings and a commitment to prepare and read all materials distributed prior to the monthly POC meetings; and

(5) Participate in a minimum of two ride-a-longs every year with APD officers; and

(6) Attend a yearly Firearms Training Simulator (FATS) training at the APD Police Academy

(C) When a vacancy on the POC occurs, the Councillor representing the District in which the vacating member of the POC resides, or another Councillor representing another District which is unrepresented on the POC, shall nominate two members to

the POC who reside in his or her respective Council District. The Mayor shall then appoint one of these recommended members to the POC with the advice and consent of the Council.

(D) The terms of the members of the POC shall be staggered so that no more than five of the members are eligible for reappointment or replacement each year.

(E) The appointment of any member of the POC who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the length of the unexpired term.

(F) That the POC 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 succeed himself or herself in the same office. Officers shall be elected in the month of March of each calendar year.

(G) The POC 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 the Commission members.

(H) That the POC and its investigative arm, the IRO, shall be housed in a facility that is separate from any police presence and is located outside of the Albuquerque/Bernalillo Government Center, the Police Department and/or all of the police substations.

(I) That the City Council and the Mayor's Office shall jointly provide staff assistance at all regularly scheduled meetings and at special meetings held pursuant to signed petitions. All other staff support shall be provided by the IRO and/or the Independent Review Office staff.

§ 9-4-1-5 POWERS AND DUTIES OF THE COMMISSION

The Police Oversight Commission shall have the following powers and duties:

(A) To promote a spirit of accountability and communication between the citizens and the Albuquerque Police Department while improving community relations and enhancing public confidence.

(B) To oversee the full investigation and/or mediation of all citizen complaints, audit and monitor all investigations and/or police shootings under investigation by APD's Internal Affairs; however, the POC will not investigate any complaints other than those filed by citizens. All complaints filed by police officers will be investigated by Internal Affairs.

(C) To gain the cooperation of APD and solicit public input by holding regularly scheduled meetings.

(D) To review all work of the IRO with respect to quality, thoroughness, and impartiality of investigations.

(E) Submit a quarterly report to the Mayor and City Council according to § 9-4-1-10 herein.

(F) To submit all findings to the Chief of Police. The Chief will have final disciplinary authority.

(G) To engage in a long-term planning process through which it identifies major problems and establishes a program of policy suggestions and studies each year.

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

(I) To recommend to the Mayor and City Council during the city's budget process, their proposed budget for provision of such staff as is necessary to carry out the powers and duties under §§ 9-4-1-1 through 9-4-1-14, including the funding for the Independent Review Office, staff, and all necessary operating expenses. The Mayor shall propose the annual budget to the City Council in the annual budget message.

(J) To recommend three candidates to the Mayor for consideration as the Independent Review Officer (IRO), and oversee the continuing performance of this individual once selected by the City Council.

§ 9-4-1-6 INDEPENDENT REVIEW OFFICE

(A) The Independent Review Office is hereby established and shall be directed by an Independent Review Officer (IRO)

(B) The IRO shall be given autonomy and shall perform all duties under the direction of the POC. There will be no attorney-client privilege between the IRO and the city.

(C) The Independent Review Office will receive all citizen complaints and claims directed against the Albuquerque Police Department and any of its officers. The IRO will review such citizen complaints and assign them for investigation to either the Albuquerque Police Department for an internal administrative investigation or to an independent investigator. The IRO will oversee, monitor and review all such investigations and make findings for each. All findings relating to citizen complaints and police shootings will be forwarded to the POC. The IRO may review completed IA cases and discuss those cases with the Chief or his designee. In any instance, the Chief of Police will have the sole authority for discipline. For all investigations, the IRO will make recommendations and give advice regarding Departmental policies and procedures to the POC, City Council, and the Mayor as the IRO deems advisable, provided as follows:

(1) That investigation of all citizen complaints filed with the Independent Review Office shall begin immediately after complaints are filed and proceed as expeditiously as possible; and

(2) That all citizen complaints filed with other offices within the city authorized to accept citizen complaints, including the Police Department, shall be referred to the IRO for investigation; and

(3) That at the discretion of the IRO an impartial system of

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

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

(6) That all information necessary to satisfy the POC's quarterly reporting requirements in § 9-4-1-10 be maintained and compiled; and

(7) The process for finalizing findings on police shooting cases shall be the same as the process for finalizing findings on citizen police complaints.

(D) The IRO shall have access to any Police Department information or documents that are relevant to a citizen's complaint, or to an issue which is ongoing at the Independent Review Office or the POC; and

(E) The IRO may make recommendations to the POC and APD on specific training, changes in policy or duty manuals. APD will respond, in writing, to all recommendations from the IRO or POC within 60 days. Follow up and monitor all recommendations to verify their adoption and implementation; and

(F) The Independent Review Office shall provide staff assistance for the POC and coordinate and provide technical support for all scheduled Police Oversight Commission meetings, publicize all findings and reports, recommendations, and/or suggested policy changes; and

(G) Play an active public role in the community, and whenever possible, provide appropriate outreach to the community. Publicize the citizen complaint process, and identify locations within the community that are suitable for citizens to file complaints in a non-police environment; and

(H) Neither the City Council nor any of its members, nor the Mayor shall in any manner dictate the appointment or removal of any such employee of the Independent Review Office.

§ 9-4-1-7 INDEPENDENT REVIEW OFFICER

(A) Qualifications for the position of Independent Review Officer shall be determined by the Police Oversight Commission. The qualifications minimally include the requirement of a law degree and experience in criminal investigations.

(B) The position of IRO will be a full-time contractual city employee to be selected as follows:

(1) A candidate search will be undertaken by the POC, who will screen, interview, and select three candidates to be considered by the Mayor; and

(2) The Mayor will select one of the three candidates and forward his recommendations to the City Council; and

(3) The City Council may accept or reject the Mayor's nominee

(4) In the event the City Council rejects the nominee, the Mayor shall submit his second recommendation from the names submitted by the POC, the City Council may accept or reject the Mayor's nominee

(5) In the event that the City Council rejects the second nominee, the process shall begin with a second candidate search by the POC

(C) The IRO will be provided the necessary professional and/or clerical employees for the Office, and shall prescribe the duties of these staff members after consultation with the members of the POC. Such professional and clerical employees will be classified city employees

(D) The IRO will report directly to the POC and act as Lead Investigator and Manager of the Office, will supervise all investigations of citizen complaints against police officers, will audit all investigations of complaints and/or police shootings, will recommend and participate in mediation of certain complaints, and will supervise all Independent Review Office staff.

(E) The term of the IRO shall be for two years, commencing immediately upon approval by the City Council. The Mayor, with the approval of the City Council, shall have the option to renew or extend the contract with the IRO for additional two-year periods. Negotiations to renew or extend the contract shall be completed three months prior to the contact expiring. Should the contract not be renewed or extended, the IRO may continue to serve in the same capacity until a new IRO is selected and approved by the City Council. If the IRO or the Mayor chooses not to renew or extend the contract, the POC shall be immediately notified. The POC will then immediately begin a candidate search, as described in § 9-4-1-7 (B)(1). If for some unforeseen reason there is a period of time during which there is no IRO, the Mayor may appoint a temporary IRO, with the consent and approval of the City Council. A temporary IRO shall only serve in that capacity for a period not to exceed 6 months

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

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

(B) The Mayor shall designate civilian city staff to receive written citizen complaints at various locations throughout the city. The Police Department may also receive written complaints. Such complaints shall be filed with the civilian city staff no later than 90 days after the action complained of. The party who receives the complaint shall transmit all citizen complaints for further investigation to the IRO. If a citizen complaint is determined to not merit further investigation, the complainant shall be notified of that determination by certified mail

(C) After the investigation is completed, the IRO and the Chief, or his designee, shall consider the investigation and all other relevant and material evidence offered by the person investigated. The IRO and Chief may confer and discuss the investigation and findings. The IRO shall then submit his findings and public record letter to the POC for review and approval. The public record letter to the citizen will only be sent after approval by the POC.

(D) If the Chief, or his designee, and the IRO disagree on the IRO's findings, the POC will receive the complaint to review at the next regularly scheduled meeting. The POC will treat the complaint as a Non-Concurrence Issue and after conducting a hearing can keep, modify, or change the original findings and/or recommendations of the IRO. If the POC/IRO and Chief do not agree on the findings of any citizen complaint, the Chief Administrative Officer will review the investigation and render a final decision, acting with the same authority and power as described in §9-4-1-9(B)

(E) When the Chief, or his designee, and the IRO agree on the findings of the POC, these findings will be considered final and cannot be changed by the Chief, or his designee, or the IRO at any time without first notifying the POC, the IRO, the complainant, and the individual(s) against whom the complaint was filed, by certified mail. Upon such notification the POC will place the matter on its agenda for a regularly scheduled meeting and decide whether the findings should be changed because (1) of newly discovered evidence which by due diligence could not have been known at the time of the original finding, or (2) the original finding was based on fraud, misrepresentation, or other misconduct.

(F) The findings of the POC/IRO shall be placed with the Chief's findings on the Internal Affairs Unit Disciplinary Status Sheet. The form will be filed in the CPC complaint file and the officer's Retention File.

(G) The Chief shall take whatever action is necessary including disciplinary action, to complete the disposition of the complaint. Written notice, by certified mail, of such disposition shall be given to the complainant and to the individual against whom the complaint was filed.

§ 9-4-1-9 APPEALS.

(A) A summary and findings of the investigation conducted pursuant to the direction of the IRO shall be forwarded to the complainant and to the POC. A copy of the IRO's public record letter shall also be forwarded to the complainant and to the POC. Any person who has filed a citizen complaint and who is dissatisfied with the findings of the IRO may appeal that decision to the POC within ten business days of receipt of the public record letter. The POC may upon appeal modify or change the findings and/or recommendations of the IRO and may make further recommendations to the Chief regarding the findings and/or recommendations and any discipline imposed by the Chief or proposed by the Chief. Within 20 days of receipt of the appellate decision of the POC, the Chief shall notify the POC and the original citizen complainant of his decision in this matter in writing, by certified mail.

(B) If any person who has filed a citizen complaint under §§ 9-4-1-1 through 9-4-1-14 is not satisfied with the final decision of the Chief of Police on any matter relating to his complaint, he may request that the Chief Administrative Officer review the complaint, the findings of the IRO and POC and the action of the Chief of Police by requesting such review in writing within ten business days of receipt of the Chief's letter pursuant to § 9-4-1-9 (A). Upon completion of his 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 IRO of the results of his review and any action he has taken.

§ 9-4-1-10 REPORTS.

The POC shall be responsible for regularly informing the Mayor, the City Council, and the public by submitting quarterly reports that contain the following types of 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 POC 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 POC's findings and the Police Chief'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 either the POC or the IRO 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 Section 9-4-1-5 of this ordinance.

§ 9-4-1-11 EVALUATION.

Contingent upon funding, in the first six months of 2005 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 SPECIAL MEETINGS.

On the petition of 1,000 or more citizens in the City of Albuquerque filed in the Office of the City Clerk, the Commission 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 by the Commission with the City Clerk. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission and shall comply with the State Open Meetings Law.

§ 9-4-1-13 CONFIDENTIALITY.

The 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 City Attorney and IRO, some of the details of the investigations of the IRO, 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 City Attorney and the IRO. Compelled statements given to the IRO, or the designated independent investigator, will not be made public. The IRO may summarize conclusions reached from a compelled statement for the report to the POC and the Chief, and in the public record letter sent to the complainant. Nothing in §§ 9-4-1-1 through 9-4-1-14 shall affect the ability of APD to use a compelled statement in a disciplinary proceeding.

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

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

Section 2. Severability Clause.

If any Section, paragraph, 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.

Section 1 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico.

Section 4. Effective Date.

This ordinance shall take effect five days after publication by title and general summary.

Attachment C

Enabling statutes for City and County of Denver, Colorado, Office of the Independent Monitor

ARTICLE XVIII. OFFICE OF THE INDEPENDENT MONITOR

Sec. 2-371. Office created.

(a) There is hereby created the office of the independent monitor ("monitor's office") for the City and County of Denver. This office shall consist of a full-time monitor with appropriate professional and support staff. For purposes of this article, "monitor" means the head of the office of the independent monitor.

(b) The monitor's office shall actively monitor and participate in certain investigations of uniformed personnel; make recommendations to the manager of safety regarding administrative action, including possible discipline, for such uniformed personnel; make recommendations regarding policy issues; and address any other issues of concern to the community, the members of the citizen oversight board ("board") created pursuant to section 2-377, the manager of safety, the chief of police, or the undersheriff. For purposes of this article, "uniformed personnel" means all members of the classified service of the Denver police department, all sworn members of the Denver sheriff department, and members of the Denver fire department who are authorized to carry and use firearms on duty.

(c) The monitor shall establish standards of professional conduct and a comprehensive training program for its own staff in order to evaluate whether internal investigations have been properly conducted and to make recommendations as to the sustaining of rule violations, the imposition of disciplinary sanctions, and changes in policy and training. (Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-372. Appointment, qualification, and removal of monitor and staff.

(a) The mayor shall direct the recruitment for the monitor's position with the assistance of the career service authority or other entity designated by the mayor.

(b) Prior to the appointment of any person to the position of monitor, the mayor shall appoint a screening committee to interview and evaluate candidates for the position. The screening committee shall consist of the following five (5) persons:

(1) The chairperson of the board, who shall be the chairperson of the screening committee;

(2) A member of city council as selected by the city council president;

(3) A current or retired judge as selected by the mayor;

(4) The director of the career service authority; and

(5) A person with extensive knowledge of internal police investigations or the monitoring of internal police investigations but who has never been employed by the Denver police, sheriff, or fire departments as selected by the mayor.

(c) The screening committee shall forward to the mayor the names of up to three (3) candidates, whose names shall be available to the public.

(d) The mayor shall appoint the monitor from the list of names submitted by the screening committee, unless the mayor decides not to appoint any of those candidates, in which case the mayor shall request the screening committee to provide additional names.

(e) The appointment of the monitor by the mayor shall not be effective unless and until confirmed by the city council acting by ordinance.

(f) The monitor shall serve at the pleasure of the mayor. Prior to any removal of the monitor by the mayor, the mayor shall consult with the city council and the board regarding his or her intention to remove the monitor.
(g) The staff of the monitor's office shall be hired by the monitor and shall serve at the pleasure of the monitor.
(h) Neither the monitor nor any employees of the monitor's office shall have formerly been employees of the Denver police, sheriff, or fire departments.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-373. Mandatory oversight by the monitor's office.
(a) The monitor's office shall actively monitor and participate in any criminal investigation of the incidents set forth below when the investigation is conducted by any law enforcement agency of the City and County of Denver. For criminal investigations conducted by the Denver district attorney or law enforcement agencies of any other jurisdiction, the monitor's office shall actively monitor and participate in such investigations to the extent permitted by the agency. In addition, the police, sheriff, or fire internal affairs bureaus ("IAB") shall investigate any incident set forth below and the monitor's office shall actively monitor and participate in such IAB investigations:
(1) Any shooting involving uniformed personnel, whether duty related or not;
(2) Any in-custody death;
(3) Any duty-related incident during which, or as a result of which, anyone dies or suffers serious bodily injury as that term is defined in C.R.S. § 18-1-901(3)(p), as it may be amended from time to time;
(4) Any incident whether or not duty related, in which police or sheriff department uniformed personnel is under investigation for, or charged by, any jurisdiction with a felony;
(5) Any incident, whether or not duty-related, in which police or sheriff department uniformed personnel is under investigation for, or charged with, any crime set forth in C.R.S. tit. 18, art. 3 (offenses against the person, which includes homicide, assault, kidnapping, and unlawful sexual behavior) as they may be amended from time to time; or
(6) Any incident, whether or not duty-related, in which police or sheriff department uniformed personnel is under investigation for, or charged by, any jurisdiction with a misdemeanor or local law violation in which a use of force (defined as assaulting, beating, striking, fighting, or inflicting violence on a person) or threatened use of force is an element of the offense.
(b) With respect to paragraphs (4), (5), and (6) of subsection (a), if no criminal charges are filed subsequent to an investigation or such criminal charges are dismissed, the monitor's office shall nevertheless have the discretion to monitor any internal investigation arising from the subject incident.
(c) Any uniformed personnel involved in any of the incidents described in subsections (4), (5), or (6) of subsection (a) shall self-report such involvement to the monitor's office and the manager of safety within three (3) business days of becoming aware that he or she is under investigation for, or charged with, any of the designated offenses. If the manager of safety, chief of police, undersheriff, or any other manager within the department of safety becomes aware of any such incident, that person shall report such

incident to the monitor's office within three (3) business days of becoming aware of the incident.
(d) In addition, the monitor's office shall monitor any other internal investigation of possible misconduct by uniformed personnel when requested to do so by the board or manager of safety. The board or manager of safety shall advise the monitor's office of the reasons why the board or the manager of safety believes the monitor's office should monitor the investigation. Within three (3) business days of determining to monitor an investigation or of receiving the request from the board or the manager of safety, the monitor's office shall advise the police, sheriff's, or fire's IAB only that the monitor's office will monitor the investigation pursuant to this paragraph.
(e) The police, sheriff's, or fire IAB shall forward to the monitor's office, the board, and the manager of safety:
(1) Within three (3) business days of opening a new internal investigation, information regarding that investigation; and
(2) Within three (3) business days of closing an IAB case where no disciplinary action was taken, information regarding that investigation.
(f) Upon a request by the board or the manager of safety, the monitor's office shall review closed IAB cases in which the IAB investigation has already been completed and the monitor's office did not monitor the investigation. For purposes of this article "closed IAB cases" means cases in which IAB has completed its investigation and either:
(1) The case was pending before the PSRC on May 2, 2005; or
(2) A complaint regarding the matter was filed with IAB, the monitor's office, or the citizen oversight board on or after November 2, 2004, and no complaint alleging the same alleged misconduct had previously been filed.
Based upon that review, the monitor's office may conduct additional investigation. The monitor's office may also make any recommendations to the manager of safety regarding the sufficiency of the investigation, determinations as to whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any. The board may also review citizen complaints for which the monitor did not monitor the investigation and for which the outcomes were unfounded, exonerated, or not sustained. Those complaints reviewed by the board may be referred back to the appropriate department with recommendations from the board pertaining to the outcome of that particular complaint and/or with recommendations pertaining to the department's policies and procedures. For purpose of this article, "unfounded" means the complaint was not based on facts, as shown by the investigation, or the alleged violation or action did not occur; "exonerated" means the alleged action did occur, but the action was reasonable, lawful, and proper; and "not sustained" means insufficient evidence is available to either prove or disprove the allegation.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-374. Discretionary oversight by the monitor's office.
(a) The monitor's office shall have the discretion to monitor any internal police or sheriff department investigation of any citizen complaint alleging:
(1) Improper use of force;
(2) Discrimination based upon race, color, creed, national origin, gender, sexual orientation, gender variance, disability, religion, or political affiliation;

(3) Retaliation for making a complaint against the police or sheriff department or any police or sheriff department uniformed personnel; or
(4) Discourtesy.
(b) The monitor's office shall also have the discretion to monitor any internal investigation by the police or sheriff department as to which the monitor's office believes it is in the city's best interest for the monitor's office to be involved.
(c) Upon exercising discretion to monitor an investigation identified in subsection (a) or (b), the monitor's office shall immediately advise:
(1) The board and the manager of safety that the monitor's office has decided to monitor such investigation and of the monitor's office's reasons for monitoring the investigation; and
(2) The police or sheriff's IAB only that the monitor's office shall monitor the investigation pursuant to the provisions of paragraphs (a) and (b) above.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-375. Reports of the monitor.
(a) No later than March 15th of each year, the monitor shall submit an annual public report to the mayor and city council, setting forth the work of the monitor's office during the prior calendar year; identifying trends regarding complaints, investigations, and discipline of police and sheriff department uniformed personnel, including, but without identifying specific persons, information regarding uniformed personnel who were the subject of multiple complaints, complainants who filed multiple complaints, and issues that were raised by multiple complaints; and making recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary actions, if any, and changes to policies, rules, and training.
(b) The report shall present information in statistical and summary form, without identifying specific persons except to the extent that incidents involving specific persons have otherwise been made public by the City and County of Denver.
(c) In addition to the annual report, the monitor's office shall maintain an on-going status report, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any. Based upon an analysis of this information and other information available to the monitor, the monitor's office shall make timely recommendations to the chief of police, undersheriff, and the manager of safety regarding an early warning system and/or other policy issues.
(Ord. No. 730-04, § 1, 10-4-04) Amended June 2006

Sec. 2-376. Confidentiality.
(a) The monitor, its staff, the board, and all consultants and experts hired by the monitor shall treat all documents and information regarding specific investigations or officers as confidential except to the extent needed to carry out their duties.
(b) The monitor's office shall not discuss with any person or group, including the members of the board, the status of any criminal investigation, other than the fact that a criminal investigation has not been completed and any anticipated date by which a criminal investigation may be completed.

(c) The monitor's office, the board, and all persons who participate in the police, sheriff, or fire department's investigative and disciplinary processes are part of the city's deliberative process regarding investigative and disciplinary procedures for uniformed personnel. Furthermore, all information learned by any of those persons or groups during the exercise of their duties shall be protected by the deliberative process privilege.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-377. The citizen oversight board.
(a) There is hereby created the citizen oversight board.
(b) The functions of the board shall be to:
(1) Assess the effectiveness of the monitor's office;
(2) Make policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations; and the complaint process;
(3) Address any other issues of concern to the community, members of the board, the monitor, the manager of safety, the chief of police, the undersheriff, or the fire chief;
(4) Make recommendations as to specific cases as provided in subsection (f) of section 2-373; and
(5) Exercise such other powers and duties as are set forth in this article.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-378. Appointment and qualification of board members.
(a) The civilian oversight board shall consist of seven (7) members who shall be residents of the City and County of Denver.
(b) The mayor shall appoint, subject to confirmation by the city council, the members of the board.
(c) No officer or employee of the City and County of Denver shall be appointed to the board.
(d) Neither the members of the board nor any of their immediate family members (defined as husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, grandmother, grandfather, brother, sister, domestic partner, and in-laws) shall have ever been employed by the Denver police, sheriff, or fire departments.
(e) The members of the board should reflect the diversity of Denver, including the ethnic, racial, and geographic constitution of the population as well as the diverse professional backgrounds, experience, and expertise of the citizens of Denver.
(f) The members of the board shall receive compensation in an amount not to exceed one thousand two hundred dollars ($1,200.00) per year and be paid necessary expenses incurred in connection with the work of the board.
(g) The members of the board shall participate in an appropriate training program to be established by the board and/or the monitor's office so that they shall possess the applicable knowledge to perform their duties.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-379. Terms and vacancies.
(a) The term of each member of the board shall be four (4) years.
(b) Any vacancy occurring during the term of any member shall be filled by appointment by the mayor and confirmed by city council.

(c) The members first appointed after the effective date of this section shall be appointed as follows so as to create staggered terms: Three (3) members shall be appointed to serve for two (2) years and four (4) members shall be appointed to serve for four (4) years. After these initial appointment terms have been served, each member of the board shall be appointed thereafter for a four-year term.
(d) Each member shall continue to serve in such capacity until the member's successor has been duly appointed and is acting, provided, however, that that period shall not exceed ninety (90) days past the expiration of the member's term.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-380. Removal from office.
Prior to the expiration of his or her appointed term, a member of the board may be removed from the board by the mayor for cause including a persistent failure to perform his or her duties on the board or if, subsequent to being selected as a member of the board, information becomes known to the mayor that, had it been known when the member was selected, the information would have disqualified him or her from being selected.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-381. Officers.
The board shall annually elect from among its members a chairperson and a vice-chairperson, who shall serve in such capacities until their successors are duly elected. In case of a vacancy in either of these positions, the board shall elect a successor who shall serve the unexpired balance of the predecessor's term.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-382. Meetings of the citizen oversight board.
(a) The board shall conduct at least three (3) meetings annually for public comment, including a meeting to be held not later than thirty (30) calendar days after the issuance of the board's annual report and shall from time to time meet with citizens' groups to learn of citizens' concerns and to inform the citizens of relevant information regarding the activities of police, sheriff, and fire departments, the monitor's office, and the board.
(b) The board shall meet at least bi-monthly with the monitor.
(c) The board shall meet at least quarterly in public with the manager of safety, the chief of police, and the undersheriff and shall meet with any other city personnel on an as-needed basis to discuss any issues of concern and to make recommendations for ways that the police, sheriff, and fire departments can improve their relationships with the citizens and recommendations regarding policies, rules, hiring, training, and the complaint process.
(d) The board shall fix the time and place of its meetings.
(e) The board shall maintain records of its meetings, which records shall be available to the public.
(f) All public meetings of said board shall be subject to the provisions of article III of chapter 2 of the Revised Municipal Code dealing with open meetings.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-383. Interaction between the monitor's office and the citizen oversight board.
(a) The monitor's office shall inform the board of the status of police, sheriff, and fire department investigations and disciplinary proceedings and the actions of the monitor's office in monitoring those investigations and disciplinary proceedings.
(b) The board shall establish both qualitative and quantitative criteria for evaluating the effectiveness of the monitor.
(c) In order to determine whether the monitor's office is effectively monitoring police, sheriff, and fire investigations, the board shall receive regular reports from the monitor's office and shall be allowed to review pertinent portions of the personnel files of uniformed personnel and IAB files including statements of uniformed personnel and to make recommendations to the manager of safety, chief of police, undersheriff, fire chief, and monitor's office regarding investigations, determinations as to whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any. However, the board shall not become the custodian of any such records and the board shall not be allowed access to documents protected by the attorney-client privilege or the attorney work product privilege.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-384. Reports of the citizen oversight board.
(a) The board shall furnish an annual public report to the mayor and city council regarding the board's assessment of the work of the monitor's office; the board's activities during the preceding year; concerns expressed by citizens; the board's assessment of the police, sheriff, and fire department investigative and disciplinary processes; recommendations for ways that those three (3) departments can improve their relationships with the citizens; and recommendations for changes to police, sheriff, and fire department policies, rules, hiring, training, and the complaint process.
(b) The board's annual report shall be furnished concurrently with the monitor's annual report to the mayor and city council.
(c) In addition to the annual report, the board may furnish additional reports, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any.
(d) The board shall have the ability to hire consultants to assist in assessing the effectiveness of the monitor's office and in preparing the board's annual report and any other reports.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-385. Rules.
The board shall publish and make available to the public such procedural rules as it may adopt for the conduct of its business.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-386. Citizen complaints.
(a) In addition to availing themselves of any citizen complaint mechanisms that are provided by the department of safety, police department, or sheriff department, citizens

may file complaints of alleged misconduct by uniformed personnel with the board or the monitor's office.
(b) Whenever a citizen files a complaint with the monitor's office, the board, or the police or sheriff departments, the agency receiving the complaint shall, within three (3) business days, advise all of the other agencies (the board; the monitor's office; the manager of safety; and, when received by the board or the monitor's office, either the police department or sheriff department) that it has received the complaint and provide a copy of the complaint to each of them.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-387. Investigations by the Denver district attorney's office.
(a) The procedures relating to the monitor's office's actively monitoring and participating in criminal investigations conducted by the Denver district attorney's office ("DA") shall be established by an intergovernmental agreement between the City and County of Denver and the DA. That agreement shall address, among other things, reasonable access by the monitor's office to the crime scene at the earliest feasible time, witness interviews, and other evidentiary items and the monitor's role in making recommendations regarding those investigations.
(b) Upon completion of the DA's investigation, but not later than sixty (60) calendar days from the date of the incident, the IAB from either the police or sheriff department shall open a file and initiate an administrative investigation of the incident unless the manager of safety in consultation with the DA determines that the administrative investigation would jeopardize the DA's investigation.
(c) The DA's investigation will be considered to be complete:
(1) When the DA files criminal charges against any uniformed personnel involved in the shooting; or
(2) When the DA issues a public letter stating that it does not intend to file criminal charges against any of the uniformed personnel involved in the shooting.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-388. Internal investigations.
(a) The police, sheriff, and fire departments shall establish by departmental policies that they will cooperate with the monitor's office in actively monitoring and participating in internal investigations. Those policies shall provide for, among other things, complete access to interviews of witnesses including uniformed personnel, IAB files, personnel files, and other evidentiary items but not including documents protected by the attorney-client privilege and the attorney work product privilege. The policies shall also provide for the ability of the monitor to make recommendations regarding those investigations and for reasonable time frames to complete the steps in the internal investigatory process.
(b) For any investigation that it monitors, the monitor's office shall review the investigation to ensure that it is thorough and complete.
(c) If the monitor's office cannot certify that the investigation is thorough and complete, the monitor's office may request that IAB conduct additional investigation.
(d) If IAB does not complete the additional investigation to the satisfaction of the monitor's office, the monitor's office may conduct additional investigation, including issuing subpoenas.

(e) The monitor's office shall advise the board, manager of safety, and chief of police or undersheriff of the reasons that the monitor's office was not satisfied with IAB's investigation and of the additional investigation conducted by, or to be conducted by, the monitor's office.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-389. Role of the monitor's office in the disciplinary process.
The police, sheriff, and fire departments shall establish by departmental policies that they will cooperate with the monitor's office in actively monitoring and participating in disciplinary proceedings. Those policies shall provide for, among other things, complete access to the proceedings of departmental boards involved in the disciplinary process and all materials to which those boards have access. In addition, those policies shall ensure the participation of citizens on those boards. The policies shall also provide for the ability of the monitor's office to attend disciplinary proceedings, to review disciplinary documents, and throughout the disciplinary process to make recommendations regarding determinations as to whether department rules or policies have been violated and the appropriateness of disciplinary sanctions, if any. Furthermore, the policies shall provide for reasonable time frames to complete the steps in the disciplinary process.
(Ord. No. 730-04, § 1, 10-4-04)

Attachment D

Enabling statutes for City of Portland, Oregon, City Auditor's Independent Police Review Division

Chapter 3.21 City Auditor's Independent Police Review Division

Table of Contents (Printable Version)

- Note

(Chapter replaced by Ordinance No. 175652, effective July 1, 2001.)

3.21.010 Purpose.

The City hereby establishes an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to act on complaints against Police Bureau personnel for alleged misconduct, and recommend appropriate changes of Police Bureau policies and procedures toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the provision of community policing services. This office shall be known as the Independent Police Review Division.

3.21.020 Definitions.

(Amended by Ordinance Nos. 176317, 183657 and 186416, effective February 7, 2014.) In this Chapter:

A. "Appellant" means either:

1. A person who has filed a complaint with IPR and subsequently requested review of the investigation or

2. A member about whom a complaint has been filed with IPR and who has subsequently requested review by the Committee of the investigation.

B. "Bureau" means the Bureau of Police of the City of Portland, Oregon.

C. "Chief" means the Chief of the Bureau.

D. "Citizen" or "community member" means any person who is not an employee of the Bureau.

E. "Commissioner In Charge" means the Commissioner In Charge of the Bureau.

F. "Committee" means the Citizen Review Committee, which is appointed by City Council members to assist IPR in the performance of its duties and responsibilities pursuant to this Chapter.

G. "Complaint" means a complaint by a citizen, the Director, a member or other employee of the Bureau of alleged member misconduct.

H. "Complainant" means any person who files a complaint against a member of the Portland Bureau.

I. "Director" means the director of the Independent Police Review Division or the Director's designee.

Title 3

Chapter 3.02 Council Organization and Procedure
Chapter 3.04 Subpoena Powers
Chapter 3.05 City Auditor's Audit Services Division
Chapter 3.06 Departments, Bureaus and Divisions Generally
Chapter 3.08 Treasurer
Chapter 3.10 Office of City Attorney
Chapter 3.12 Bureau of Transportation
Chapter 3.13 Bureau of Environmental Services
Chapter 3.15 Office of Management and Finance
Chapter 3.16 City Budget Office
Chapter 3.18 (Repealed)
Chapter 3.20 Bureau of Police
Chapter 3.21 City Auditor's Independent Police Review Division
Chapter 3.22 Portland Fire & Rescue
Chapter 3.24 Portland Water Bureau
Chapter 3.26 Bureau of Parks
Chapter 3.27 Portland Parks and Recreation Board
Chapter 3.28 Bureau of Health
Chapter 3.30 Bureau of Development Services
Chapter 3.32 (Repealed)
Chapter 3.33 Bureau of Planning and Sustainability
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Chapter 3.36 Portland Housing Bureau
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Chapter 3.40 (Repealed)
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Chapter 3.46 Bureau of Insect Control
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Chapter 3.53 (Repealed)
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Chapter 3.58 (Repealed)
Chapter 3.60 (Repealed)
Chapter 3.62 Boxing Commission
Chapter 3.64 (Repealed)
Chapter 3.66 (Repealed)
Chapter 3.67 Performing Arts Advisory Committee
Chapter 3.68 Formal Japanese Garden Commission
Chapter 3.70 Pittock Mansion Advisory Commission
Chapter 3.71 (Repealed)

J. "Finding" means a conclusion reached after investigation as to whether facts show a violation of Bureau policy.

K. "Early Warning System" means the Bureau's method of identifying officers exhibiting a pattern of behavior that signals potential problems for both the Bureau and public, as explained in General Order 345.00.

L. "IAD" means the Internal Affairs Division of the Bureau, whose responsibilities and procedures are described in Section 330.00 of the Manual of Rules and Procedures of the Bureau, as amended from time to time.

M. "IPR Investigator" means an investigator of the Independent Police Review Division.

N. "IPR" means the Independent Police Review Division.

O. "Member" means a sworn employee of the Bureau or a supervisor of sworn employees. An "involved" member is a member about whom a complaint has been submitted to IPR or the Bureau.

P. "Misconduct" means conduct by a member which conduct violates Bureau regulations or orders, or other standards of conduct required of City employees.

Q. "Request for Review" means a request by an appellant that the Committee review an IAD or IPR investigation of alleged member misconduct.

R. "RU (Responsibility Unit) Manager" means a commanding officer or manager of a Bureau division, unit or precinct.

S. "Supported by the Evidence." A finding regarding a complaint is supported by the evidence when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.

T. "Police Review Board" means the board established by Code Section 3.20.140.

U. "Policy-related issue" means a topic pertaining to the Police Bureau's hiring and training practices, the Manual of Policies and Procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular officer's conduct.

3.21.030 Independent Police Review Division.
There is established by the City Council the Independent Police Review Division within the Auditor's Office.

3.21.040 Director Selection.
(Amended by Ordinance No. 186416, effective February 7, 2014.) The City Auditor shall select the Director of IPR in accordance with any applicable civil service regulations and other laws. The Director shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems of administration, and public policy, and shall have a working knowledge in criminal justice commensurate to the powers and duties of the office.

3.21.050 Staff and Delegation.
(Amended by Ordinance No. 186416, effective February 7, 2014.)

A. The Director may appoint other personnel necessary to carry out the provisions of this chapter, when in keeping within the adopted budget for the IPR.

B. The Director may delegate to a designee any or all duties or responsibilities.

3.21.060 Office Facilities and Administration.

A. The City shall provide suitable office facilities for the Director and staff in a location convenient for the public but separate from the Bureau.

B. The IPR office shall be located within the City Auditor's office, and be accountable to the City Auditor. The Director shall comply with City purchasing procedures but shall have sole discretion in choosing consultants to assist with investigations.

3.21.070 Powers and Duties of IPR.
(Amended by Ordinance Nos. 176317, 183657, 185076 and 186416, effective February 7, 2014.) The Director's powers and duties are the following:

A. Intake. IPR shall receive complaints and select the appropriate manner to address the complaint.

B. Report on complaint activities. IPR shall track and report on the disposition of complaints to the public, IAD, the Chief, and the Council and monitor and report measures of activity and performance of IAD and IPR. IPR will also monitor and track trends relating to member history and complaint type as well as frequency, consistency and adequacy of discipline imposed. In performing these duties, IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.

C. Access to Police data and data sources. IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.

D. Initiate, monitor and conduct investigations. IPR is authorized to initiate, monitor and conduct administrative investigations. IPR is authorized to identify complaints or incidents involving members that are of community concern which merit additional involvement of the Director and to review evidence and IAD investigation efforts, participate in investigations with IAD investigators, or conduct the investigations in conjunction with or independent of the Bureau. The Bureau shall notify the Director that it intends to conduct an administrative investigation into

Chapter 3.72 Committee on Claims
Chapter 3.74 Oaths of Office
Chapter 3.76 Public Records
Chapter 3.77 Office of the Ombudsman
Chapter 3.78 Acquisition of County Property for Park Purposes
Chapter 3.80 Special Permits
Chapter 3.82 Officer and Employee Bonds
Chapter 3.84 City Owned Motor Vehicle Accident Reports
Chapter 3.86 Golf Advisory Committee
Chapter 3.88 Investment Advisory Committee
Chapter 3.90 (Repealed)
Chapter 3.92 (Repealed)
Chapter 3.94 (Repealed)
Chapter 3.95 (Repealed)
Chapter 3.96 Office of Neighborhood Involvement
Chapter 3.98 Towing Board of Review
Chapter 3.99 Fair Wage Policies
Chapter 3.100 Equal Opportunity
Chapter 3.101 Property Tax Exemption for Low Income Housing Held by Charitable Non-Profit Organizations
Chapter 3.102 Property Tax Exemption for New Construction of Single-Unit Housing in Homebuyer Opportunity Areas
Chapter 3.103 Property Tax Exemption for Multiple-Unit Housing Development
Chapter 3.104 (Repealed)
Chapter 3.105 (Repealed)
Chapter 3.106 Exposition-Recreation Commission
Chapter 3.107 Water Quality Advisory Committee
Chapter 3.110 Bureau of Hydroelectric Power
Chapter 3.111 (Repealed)
Chapter 3.112 (Repealed)
Chapter 3.114 Office for Community Technology
Chapter 3.115 Mt. Hood Cable Regulatory Commission
Chapter 3.116 Waterways Advisory Committee
Chapter 3.120 (Repealed)
Chapter 3.122 Economic Improvement Districts
Chapter 3.123 Portland Utility Review Board
Chapter 3.124 Portland Bureau of Emergency Management
Chapter 3.125 Disaster Policy Council
Chapter 3.126 Emergency Management Steering Committee
Chapter 3.127 Bureau of Portland Fire and Police Disability and Retirement
Chapter 3.128 Office of Equity and Human Rights
Chapter 3.129 Human Rights Commission

misconduct before initiating the investigation. IPR will conduct these investigations in accordance with Human Resources Administrative Rules regarding process and investigation of complaints of discrimination.

E. Compel review. In accordance with the procedures of Code Section 3.20.140, the Director may compel review by the Police Review Board of any recommended findings of or recommendation for discipline by an RU Manager or Commanding Officer resulting from a Bureau or IPR administrative investigation of a member. The Director may compel review by the Police Review Board on the basis of recommended discipline whether or not discipline was recommended as a result of the investigation.

F. Communicate with Complainants. IPR will be the primary contact with the complainant regarding the status and results of the complaint, to assist IAD in communicating with the Member.

G. Arrange hearings of appeals. IPR will explain the appeal options to complainants and schedule hearings before the Committee and Council.

H. Recommend policy changes. IPR will evaluate complaint and other information and investigation practices to make recommendations to the Chief to prevent future problems. Policy change recommendations shall be published for public review.

I. Outreach. IPR will widely distribute complaint forms in languages and formats accessible to citizens, educate them on the importance of reporting complaints, and hold public meetings to hear general concerns about police services.

J. Access to records. Notwithstanding any other provision of City law, IPR shall have access to and be authorized to examine and copy, without payment of a fee, any bureau records, including records which are confidential by city law, and police databases, subject to any applicable state or federal laws. The Director shall not have access to legally privileged documents held by the City Attorney or Attorney-Client communications held by the City Attorney clients. The Director shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.

K. Adoption of rules. IPR shall adopt, promulgate, amend and rescind rules and procedures required for the discharge of the Director's duties, including policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Director may not levy any fees for the submission or investigation of complaints.

L. Review of closed investigations. IPR shall hire a qualified person to review closed investigations pertaining to officer-involved shootings and deaths in custody on an ongoing basis. IPR shall issue reports on an annual basis identifying any policy-related issues or quality of investigation issues that could be improved. The Director and the Citizen Review Committee shall address any policy-related or quality of investigation issues that would warrant further review.

M. Additional public reports. The Director may issue public reports related to member misconduct trends and Bureau disciplinary practices. Conduct investigative interviews of Bureau employees.

N. Conduct investigative interviews of Bureau employees.

O. All Bureau employees shall be truthful, professional and courteous in all interactions with IPR. No member shall conceal, impede or interfere with the filing, investigation or adjudication of a complaint.

P. The Auditor may work through the City Attorney's Office to hire outside counsel when the Auditor and City Attorney agree that outside legal advice is necessary and advisable.

3.21.080 Citizen Review Committee.

(Amended by Ordinance Nos. 177688, 185076 and 186416, effective February 7, 2014.)

A. The Committee shall consist of eleven citizens. Five members shall constitute a quorum of the Committee. Decisions shall be made by a majority of Committee members present and constituting a quorum. However, adoption or amendment of rules of procedures or protocols requires an affirmative vote of six members. The Committee members shall be appointed as follows:

1. The Director shall solicit applications from the Office of Neighborhood Involvement, the seven Neighborhood Coalition offices, Mayor and commissioners' offices, PPB advisory committees, and the general public.

2. The City Auditor shall appoint a committee that shall recommend to the Auditor the appropriate number of nominees to fill impending vacancies. The selection committee shall consist of three CRC representatives, either past or not applying for reappointment, two members of the community, and the Director. Three of the selection committee members, including one CRC representative and the Director, shall serve as the interview panel.

3. Selection criteria shall include a record of community involvement, passing a criminal background check performed by an agency other than the Bureau, and absence of any real or perceived conflict of interest. The selection committee will nominate individuals who are neutral, unbiased, and capable of making objective decisions. The Mayor and commissioners may each submit an applicant meeting these qualifications.

4. The Auditor shall recommend nominees to Council for appointment.

5. In the event a majority of the Council fails to appoint a person nominated under the provisions of City Code Section 3.21.080 the Auditor shall initiate the process again within 30 days after the Council action.

6. In selecting Committee members, consideration shall be given to the current composition of the Committee and appointments should be made that will cause the group to best reflect the demographic make-up of the community.

B. The Committee members shall:

1. Participate in orientation and training activities that may include review of Bureau and IPR procedures, participation in Bureau training to become familiar with police training, policies and investigative practices, including Police Review Board process, participate in ride-alongs with officers, to maintain sufficient knowledge of police patrol procedures.

2. Each serve a term of three years, subject to reappointment by Council. Upon expiration of the term, a committee member shall serve until re-appointed or replaced.

3. Attend committee meetings or provide an explanation in advance for an absence.

4. Serve staggered terms to better ensure continuity. Four members of the Committee shall be appointed to one year terms in July 2001.

5. Select a chair from among their members. Adopt such operating policies and procedures as necessary to carry out their duties.

6. Sign a confidentiality statement.

7. Serve on the Police Review Board when the Board reviews use of force cases as defined in Chapter 3.20. Committee members shall serve on the Police Review Board on a rotating basis for no more than two terms of three years.

3.21.090 Powers and Duties of the Committee.
(Amended by Ordinance Nos. 177688 and 185076, effective December 14, 2011.)

A. The Committee's duties and powers are the following:

1. Conduct meetings. To schedule and conduct at least four meetings per year for the purpose of exercising the authority delegated to it in this chapter. Quarterly meetings and hearings conducted pursuant to the Chapter shall be subject to the Oregon Public Meetings Law, ORS 192.610 through 192.710. The number of Committee members required for a quorum shall be five.

2. Gather community concerns. To participate in various community meetings to hear concerns about police services.

3. Recommend policy changes. To evaluate complaint, investigative practices, and other information to make policy recommendations to the Chief of Police, the Director, and the Council to prevent and rectify patterns of problems.

4. Advise on operations. To review methods for handling complaints and advise on criteria for dismissal, mediation, and investigation.

5. Hear appeals. To hold hearings of complainant or member appeals as defined in City Code Section 3.21.160; to recommend referral to a final hearing before Council; to publicly report its findings, conclusions and recommendations.

6. Outreach to public. To advise and assist the Director to disseminate information about IPR and Committee activities to organizations in the community; to present reports to Council.

7. Create other committees. To create special purpose subcommittees or committees including other citizens to address particular short-term issues and needs.

3.21.100 Council Role.
A. Council shall review applications of nominees to the Committee and vote whether to approve each appointment.

B. Council shall hear final appeals as specified in 3.21.160.

3.21.110 Intake.
(Amended by Ordinance Nos. 179162 and 186416, effective February 7, 2014.)

A. The Director shall receive complaints from any source concerning alleged member misconduct. The Director shall make reasonable accommodation when complainants cannot file their complaint at the IPR office. All allegations of use of excessive force shall be subject to a full and completed investigation resulting in findings, unless there is clear and convincing evidence to IPR that the allegation has no basis in fact.

B. The Director shall develop procedures for handling complaints and appeals involving matters currently in litigation or where a notice of tort claim has been filed. The Director shall not initiate a case where a grievance or other appeal has been filed under a collective bargaining agreement or City personnel rules; or with respect to employee or applicant discrimination complaints.

C. The Director, when requested, shall protect the confidentiality of complainants, members or witnesses consistent with the requirements of the Oregon Public Records Law, except insofar as disclosures may be necessary to enable the Director to carry out his or her duties, or to comply with applicable collective bargaining agreements, or the disclosure of records is directed by the District Attorney. When considering a request for public records, the Director shall consult with appropriate Bureau personnel and obtain approval from the Bureau prior to disclosure of records under the Oregon Public Records Law.

3.21.120 Handling Complaints.
(Amended by Ordinance Nos. 179162, 183657 and 186416, effective February 7, 2014.) To ensure appropriateness and consistency in handling complaints the Director shall work with the Committee to establish procedures for taking action based upon the characteristics of the complaint.

A. Mediation. The complainant, the Member who is the subject of the complaint, and Bureau administration must all agree before mediation can be conducted. A complaint that undergoes mediation shall not be investigated. A mediation may be suspended if, in the opinion of the mediator, there is no reasonable likelihood of reaching resolution.

B. Complaint Types:

1. Complaint Type I: IPR is the intake point for complaints from community members and others regarding the conduct of members during an encounter involving a community member. Type I complaints involve alleged misconduct of a member during an encounter involving a community member.

2. Complaint Type II: A complaint about alleged member misconduct that does not occur during an encounter involving a community member is a Type II complaint. Such a complaint may be initiated by another Bureau employee or supervisor, or may be based on information obtained from another law enforcement agency, an employee of governmental agency acting in an official capacity or a community member. These complaints may be filed with the Bureau or with IPR.

3. Complaint Type III: A complaint may be initiated by the Director at the discretion of the Director that an administrative investigation is warranted. IPR can initiate a complaint whether or not the alleged misconduct occurred during an encounter involving a community member and is not dependent on a community or Bureau member filing a complaint.

a. IPR will initiate and conduct administrative investigations in accordance with Human Resources Administrative Rules regarding process and investigation of complaints of discrimination.

b. If a criminal investigation has been initiated against the involved member, or during the course of an IPR administrative investigation a basis for conducting a criminal investigation arises, IPR shall advise the City Attorney and/or District Attorney prior to initiating or continuing an administrative investigation. IPR shall take all steps necessary to meet constitutional requirements and comply with existing provisions of City labor agreements.

4. Complaint Type IV: When Bureau supervisors generate complaints about poor member performance or other work rule violations. RU managers are responsible for intake and investigation of allegations of Type IV cases.

5. For all complaint types, the Bureau shall notify IPR prior to the termination of any administrative investigation that has not been assigned for recommended findings.

C. Initial Handling and Investigation of Type I Complaints

1. Once IPR receives a Type I complaint regarding alleged misconduct of a member during an encounter involving a community member, IPR will:

a. Gather information about the complaint through an intake interview;

b. Assign an IPR/IAD Case Number;

c. Make a case handling decision; and

d. Send a letter to the complainant summarizing the complaint and the Director's case handling decision.

2. If IPR determines an investigation is appropriate, IPR will identify the complainant's allegations and either:

a. Recommend that the Bureau/IAD conduct an investigation
IPR shall gather information from the complainant and forward it to the Bureau/IAD. IPR shall monitor the on-going Bureau investigation. The Director may determine that a Bureau/IAD investigation should also involve IPR personnel. When forwarding the complaint to the Bureau/IAD the Director shall notify the IAD Commander of the extent that IPR personnel must be included in the investigation. Bureau/IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.
IPR personnel shall have an opportunity to review and comment on draft reports regarding a Bureau/IAD investigation to ensure accuracy, thoroughness, and fairness. The investigation cannot be closed or sent to the RU manager without IPR's determination that the investigation is complete.
To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation. In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

b. IPR may conduct an independent investigation. The Director shall have discretion to initiate and conduct an independent investigation of alleged member misconduct. The Director may conduct an independent investigation whether or not the alleged misconduct involves an encounter with a community member.
IPR investigations shall be conducted in conformance with legal and collective bargaining provisions. The Director shall notify the IAD commander that IPR has undertaken an investigation and the reason.
To facilitate review, IPR shall tape record all interviews with witnesses, including members of the Bureau, conducted during an investigation and shall make those tapes, or accurate copies, available during a review of an investigation.
The Director shall provide the IAD commander and the Police Chief with a report on the investigation, and present the IPR investigation to the RU manager for preparation of findings and proposed discipline. At the completion of the investigation and any appeal process the records of the investigation shall be transferred to the IAD offices for retention.

3. Referral. IPR may refer a complaint regarding quality of service or other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

4. Dismissal. If IPR declines to take action on the complaint, IPR will send a dismissal letter to the complainant. IPR will also notify the involved officer(s) and involved commanding officer within 30 calendar days of the dismissal. The Director may dismiss the complaint for the following reasons:

a. the complainant could reasonably be expected to use, or is using, another remedy or channel or tort claim for the grievance stated in the complaint;

b. the complainant delayed too long in filing the complaint to justify present examination;

c. even if all aspects of the complaint were true, no act of misconduct would have occurred;

d. the complaint is trivial, frivolous or not made in good faith;

e. other complaints must take precedence due to limited public resources;

f. the complainant withdraws the complaint or fails to complete necessary complaint steps.

g. it is more likely than not that additional investigation would not lead to a conclusion that the officer engaged in misconduct.

h. lack of jurisdiction.

D. Initial Handling and Investigation of Type II Complaints

1. If a Type II complaint is filed with IPR, IPR will gather information about the complaint and make a case handling decision. When appropriate, IPR will assign an IPR/IAD case number. Before disposing of a complaint of alleged misconduct or initiating an investigation, IPR shall notify the Bureau in writing how it intends to process the complaint and whether it intends to refer the case to the Bureau/IAD to conduct an investigation or conduct an independent investigation as set forth below. IPR will make an entry regarding the allegations in the Administrative Investigation Management (AIM) or other appropriate database which can be reviewed by the Director.

2. If a Type II complaint is filed within the Bureau, Bureau/IAD staff will create an intake worksheet and assign an IPR/IAD case number for use by IAD. Before disposing of a complaint of alleged misconduct or initiating an investigation, the Bureau/IAD shall notify the Director in writing how it intends to process each complaint and whether it intends to conduct an internal investigation. In addition, the Bureau/IAD will make an entry regarding the allegations in the Administrative Investigation Management (AIM) database or other appropriate database which can be reviewed by the Director.

3. Bureau/IAD Investigation. If the Type II complaint is filed with IPR, IPR shall gather information from the complainant and forward it to the Bureau/IAD. IPR shall monitor the on-going investigation. The Director may determine that a Bureau/IAD investigation should also involve IPR personnel. When forwarding the complaint to the Bureau/IAD, the Director shall notify the Bureau/IAD Commander of the extent that IPR personnel must be included in the investigation. Bureau/IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.
IPR personnel shall have an opportunity to review and comment on draft reports regarding a Bureau/IAD investigation to ensure accuracy, thoroughness, and fairness. The investigation can not be closed or sent to the RU manager without IPR's determination that the investigation is complete.
To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation.
In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

4. IPR independent investigation. The Director shall have discretion to initiate and conduct an independent investigation of alleged member misconduct. The Director may conduct an independent investigation whether or not the alleged misconduct involves an encounter with a community member.
IPR investigations shall be conducted in conformance with legal and collective bargaining provisions. The Director shall notify the Bureau/IAD commander that IPR has undertaken an investigation and the reason.
To facilitate review, IPR shall tape record all interviews with witnesses, including members of the Bureau, conducted during an investigation and shall make those tapes, or accurate copies, available during a review of an investigation.
The Director shall provide the IAD commander and the Police Chief with a report on the investigation, and present the IPR investigation to the RU manager for preparation of findings and proposed discipline. At the completion of the investigation the records of the investigation shall be transferred to the IAD offices for retention.

5. Referral. IPR may refer a complaint regarding quality of service or other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

E. Initial Handling and Investigation of Type III Complaints
Upon opening a Type III IPR initiated complaint investigation. IPR staff will create an intake worksheet and assign an IPR/IAD case number. If a Type III case involves alleged member misconduct during an encounter involving a community member, the case will be handled following the same procedures as a Type I complaint. If a Type III case involves alleged member misconduct that does not occur during an encounter involving a community member, the case will be handled following the same procedures as a Type II complaint.

F. Initial Handling and Investigation of Type IV Complaints
RU managers are responsible for intake and investigation of allegations of Type IV cases. The RU manager will provide the Director a summary of the complaint and a summary of any subsequent investigation of a sworn member. The Director may refer the matter to IAD for further investigation, conduct additional investigation, or controvert the RU manager's recommendations and compel review by the Police Review Board after receiving the completed investigation.

G. Type I, II, III & IV Post-Investigative Case Handling Procedures:

1. Adequacy of investigation. When an investigation of any type of complaint is conducted by IAD or other

designated PPB division, after the investigation is complete, IAD will provide the Director with a copy of and provide unrestricted access to the entire investigation file. Upon review of the file, the Director or designee must determine whether or not the investigation is adequate, considering such factors as thoroughness, lack of bias, objectivity, and completeness. If the Director determines that the investigation is not adequate, the investigation shall be returned to the IAD or other designated division within the Bureau explaining the determination and providing direction. Such direction shall include, but not limited to, rewriting portions of the summary, gathering additional evidence, conducting additional interviews, or re-interviewing officers or civilians. The investigation can not be closed or sent to the RU manager without IPR's determination that the investigation is complete. Upon receipt of IPR's determination that the investigation is complete, IAD shall send the investigation to the appropriate RU Manager.

2. Submission of recommended findings or proposed discipline. The RU manager will review the investigation for any type of complaint when the investigation is conducted by IAD, other designated PPB division or IPR and submit recommended findings and proposed discipline to the supervising Assistant Chief. The supervising Assistant Chief will circulate the recommended findings and proposed discipline to the Director and the Captain of IAD. After receipt of the recommended findings and proposed discipline, the supervising Assistant Chief, the Director or the Captain of IAD may controvert the RU Manager's recommended findings and/or proposed discipline.

3. Police Review Board meeting. If the recommended findings and/or proposed discipline are controverted, the Bureau shall schedule a Police Review Board meeting on the complaint. As specified in Code Section 3.20.140, the Police Review Board shall also hold a meeting for review of a case if it involves an officer-involved shooting, physical injury caused by an officer that requires hospitalization, an in-custody death, a less lethal incident where the recommended finding is "out of policy" or if the investigation resulted in a recommended sustained finding and the proposed discipline is suspension without pay or greater.

4. Notification and Appeals of Type I and III complaints without Police Review Board meeting. In Type I cases, and Type III cases where the alleged misconduct occurred during an encounter involving a community member, if the recommended findings are not sent to the Police Review Board for a meeting, the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. IPR will notify the complainant that they have a right to request a review of the Bureau's recommended findings to the Committee and provide an appeal form. The Bureau will notify the involved member regarding the disposition of the complaint. The Bureau will notify the involved member of the right to request a review of the recommended findings to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM database or other appropriate database for both IPR and IAD review.

5. Notification and Appeals of Type I and III complaints after Police Review Board hearing. In Type I cases and Type III cases where the alleged misconduct occurred during an encounter with a community member and the recommended findings are sent to the Police Review Board for a meeting, the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. IPR will notify the complainant that they have a right to request a review of the recommended findings to the Committee and provide an appeal form. The Bureau will notify the involved member regarding the proposed findings of the Police Review Board. The Bureau will notify the involved member of the right to request a review of the recommended findings to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM database or other appropriate database for both IPR and IAD review.

6. No appeal of Type II and certain Type III complaints. In Type II cases and Type III cases that involve alleged member misconduct that does not occur during an encounter involving a community member, the recommended findings may not be appealed to the Committee.

7. Nothing in this section prohibits the Bureau from terminating the employment of a probationary officer without following the procedures of this Section.

8. The Police Commissioner and the City Auditor shall be notified and provided with explanatory information in all cases where an administrative investigation exceeds 129 days, and the information posted on the City's website.

3.21.130 Communications

The IPR shall ensure that the complainant and member complained about are informed of the progress and status of the complaint or appeal. Communication may be accomplished orally or by first class mail.

3.21.140 Filing of requests for review.

(Amended by Ordinance No. 183657, effective April 30, 2010.)

A. Any complainant or member who is dissatisfied with an investigation of alleged member misconduct that occurred during an encounter with a community member may request a review.

B. The request for review must be filed within 30 calendar days of the complainant or member receiving IPR's notification regarding disposition of the case. The Director may adopt rules for permitting late filings.

C. A request for review must be filed in writing personally, by mail or email with the IPR Office, or through other arrangements approved by the Director.

D. The request for review shall include:

1. The name, address, and telephone number of the appellant;
2. The approximate date the complaint was filed (if known);
3. The substance of the complaint;
4. The reason or reasons the appellant is dissatisfied with the investigation.

E. The complainant or member may withdraw the request for review at any time.

3.21.150 Case File Review.
(Amended by Ordinance No. 185076, effective December 14, 2011.)

A. When a timely appeal has been submitted to and accepted by the Director, the Director and the Committee chair will schedule a case file review meeting before the Committee to assess the completeness and readiness of the investigation for an appeal hearing.

B. As a result of the case file review, IPR or IAD may conduct additional investigation in accordance with applicable provisions of the collective bargaining agreements covering Bureau personnel per Section 3.20.120.

3.21.160 Hearing Appeals.
(Amended by Ordinance No. 185076, effective December 14, 2011.)

A. An Appeal Hearing shall be conducted after a majority vote of the Committee to hold such a hearing at the case file review or other meeting of the full Committee.

1. At the Appeal Hearing the Committee shall decide by majority vote:

a. To recommend further investigation by IAD or IPR; or

b. If the finding is supported by the evidence. In a case where the majority of the voting members of the Committee affirms that the Bureau's recommended findings are supported by the evidence, the Director shall close the complaint; or

c. If the finding is not supported by the evidence. In a case where a majority of the voting members of the Committee challenges one or more of the Bureau's recommended findings by determining that one or more of the findings is not supported by the evidence, and recommends a different finding, the Director shall formally advise the Bureau in writing of the Committee recommendation.

(1) If the Bureau accepts the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall close the case.

(2) If the Bureau does not accept the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall schedule the case for a conference hearing.

(a) At the conference hearing, if the Committee, by a majority vote, is able to reach an agreement with the Bureau on the recommended findings, the Director shall close the case.

(b) If, by majority vote, the Committee can not reach an agreement with the Bureau on the recommended findings, the Committee shall vote whether to present the appeal to City Council.

(c) If, by majority vote, the Committee decides to present the appeal to City Council, the Director and the Committee Chair will schedule an appeal hearing before City Council. The Committee shall appoint one of its members to present its recommended findings during the appeal to City Council.

2. In its hearing the Council shall decide:

a. If the finding is supported by the evidence. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint; or

b. If the finding is not supported by the evidence. The Council shall decide what the finding is. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint.

B. In reviewing the investigation, the Committee may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Committee may receive any oral or written statements volunteered by the complainant or the member or other officers involved or any other citizen. The complainant or member may appear with counsel. When the Committee's review process develops new information, the Committee may consider the new information when determining if additional investigation is warranted, but the Committee may not incorporate the new information in the evidentiary record the Committee considers when determining if a finding is supported by the evidence.

C. In reviewing the investigation, the Council may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, any documents accumulated during the investigation, the recording of the Committee's case file review and appeal hearing, the Committee's Case File review Worksheet, and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Council may receive any oral or written statements volunteered by the complainant or the member about whether or not they believe the finding is or is not supported by the evidence in the record. No new evidence may be introduced in the hearing. The complainant or member may appear with counsel.

D. Witnesses.

1. The Committee and Council may require within its scope of review the investigators and Commander of IAD and the Director to appear and answer questions regarding the investigation and may also require the responsible Bureau Commander to answer questions regarding the basis and the rationale for a particular decision.

2. Other Witnesses. Other witnesses shall not be required to appear involuntarily before the Committee.

3. Council may utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of witnesses, administer oaths and to compel the production of documents and

other evidence. The power to compel the attendance and testimony of witnesses in accordance with City Code Section 3.21.160 D.3. shall not be delegated by the Council to the Committee.

3.21.170 Monitoring and Reporting

(Amended by Ordinance No. 181483, effective January 18, 2008.)

A. The Director shall develop a data system to track all complaints received, develop monthly reports to inform IAD and the Chief regarding IAD workload and performance, and inform complainants and members regarding the status of complaints and appeals.

B. The Director shall use complaint and OMF Risk Management Division data to support the Bureau's Early Warning System.

C. The Director shall work with the Committee to develop recommendations to modify Bureau policies and procedures in order to prevent problems, improve the quality of investigations, and improve police-community relations.

D. The Director shall work with the Committee to develop quarterly and annual summary reports for the Chief, Commissioner in Charge, Council and public on IPR and IAD activities, policy recommendations, and Bureau follow-through on recommendations. The report may include analysis of closed files which were not appealed, but it is not the intent that the files be reopened.

3.21.180 Increasing Public Access

(Amended by Ordinance No. 186416, effective February 7, 2014.)

A. The Director shall work with the Committee to make complaint forms available in formats and locations to reach as many community members as possible.

B. The Director shall work with the Committee to develop programs to educate the public about IPR and the importance of reporting problems.

C. The Director shall work with the Committee to develop programs to educate Bureau personnel on the complaint process, mediation, and IPR activities. Bureau personnel shall be informed that IPR is the primary means for citizens to file complaints.

D. IPR, Committee and Bureau shall develop guidelines for situations when a commander or supervisor in a precinct is directly contacted by a complainant with a complaint. In general, they may intervene and attempt to resolve the complaint themselves, but they must also inform complainants that they can still file with IPR if they do not achieve satisfaction.

3.21.190 Response of Chief.

(Amended by Ordinance No. 186416, effective February 7, 2014.)

A. The Chief, after reviewing a report provided by IPR under City Code Section 3.21.170, shall respond promptly to IPR in writing, but in no event more than 60 days after receipt of the report. The response shall indicate what, if any, policy or procedural changes are to be made within the IAD or the Bureau.

B. If the Chief fails to respond within 60 days after receipt of the Committee Report, the Auditor shall place the matter on the Council Calendar, for consideration by City Council, within 15 days thereafter.

3.21.200 Limitation on Power.

The Committee and Director are not authorized to set the level of discipline for any member pursuant to any request for review made under this Chapter. However, this Section shall not be construed to limit the authority granted to City Council by the City Charter, City Code, state statutes, and other applicable law.

3.21.210 Subpoenas.

(Added by Ordinance No. 183657; Amended by Ordinance No. 186416, effective February 7, 2014.) IPR shall have the authority to issue subpoenas for the purpose of compelling witness testimony or the production of documents, photographs, or any other evidence necessary for IPR to fully and thoroughly investigate a complaint or conduct a review. IPR personnel will not subpoena a sworn Bureau member employed by the Portland Police Bureau, but is authorized to direct Bureau members to cooperate with administrative investigations as described in Sections 3.21.120 and 3.21.220. Any person who fails to comply with a subpoena will be subject to contempt proceedings as prescribed by State law; provided that such persons shall not be required to answer any question or act in violation of rights under the constitutions of the State or of the United States.

3.21.220 Bureau Witnesses.

(Added by Ordinance No. 186416, effective February 7, 2014.)

A. A Bureau employee shall attend investigative interviews conducted by IPR, cooperate with and answer questions asked by IPR during an administrative investigation of a member conducted by IPR. If an employee refuses to attend an investigative interview after being notified to do so by IPR or refuses to answer a question or questions asked by IPR during an investigative interview, the Police Chief or Police Commissioner shall direct the employee to attend the interview and answer the question or questions asked.

B. All IPR interviews of Bureau employees shall be conducted in conformance with legal requirements and collective bargaining provisions.

C. Prior to being interviewed, a Bureau employee will be:

1. Notified of the time, date, and location of the interview.
2. Informed of the right to bring a union representative to the interview.

3. Read a statement, issued under the authority of the Police Chief or Police Commissioner, that the employee is directed to attend the interview, cooperate during the interview and answer all questions fully and truthfully and, if the employee fails to attend the interview, cooperate during the interview or answer any questions fully and truthfully, the employee will be subject to discipline or discharge

4. Provided with any other information or protections required by any applicable collective bargaining agreement.

D. A representative of the Police Bureau shall attend IPR interviews of Bureau employees for the purpose of reading the statement referenced in Subsection C. and to provide any assistance required by IPR.

Attachment E

Enabling statutes for City of Claremont Police Advisory Commission

11/28/00
12/12/00

ORDINANCE NO. 2000-12

AN ORDINANCE OF THE CITY OF CLAREMONT, CALIFORNIA ESTABLISHING A POLICE ADVISORY COMMISSION BY AMENDING TITLE 2 AND ADDING CHAPTER 2.43 TO THE CLAREMONT MUNICIPAL CODE.

THE CITY COUNCIL OF THE CITY OF CLAREMONT, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 2 of the Claremont Municipal Code is hereby amended to Chapter 2.43 to read as follows:

"Chapter 2.43

POLICE ADVISORY COMMISSION

Sections:

2.43.010 Purpose. The Commission is designed to be interactive to facilitate dialogue on issues of concern regarding the Police Department. The Commission's overall objective shall be to create a climate of mutual respect and partnership among community members and the Police Department by creating a forum for communication and deliberation of actions that are inclusive of all citizens.

2.43.020 Powers and Duties. The Police Advisory Commission shall provide a forum for community discussion on police issues; make recommendations to the City Council, City Manager, and Police Chief on police issues; and promote education and communication between citizens and the Police Department. In seeking to accomplish its mission the Police Advisory Commission shall have the powers and duties as described below:

A. To provide a forum to facilitate communication between the community and the Police Department.

B. To review and comment on Police Department policies, procedures and practices, and to assist in setting goals for the Department that reflect community values.

C. To provide a forum to address concerns, complaints and commendations regarding the Police Department and to receive reports on the progress or conclusions of investigations, when legally possible.

D. To review and comment on recruitment and training programs that promote recruitment and retention of qualified police personnel who represent, understand and respect the cultural diversity of Claremont's residential, educational and business communities.

E. To review customer service programs, community oriented policing programs, crime trends and statistics, and crime prevention programs.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CLAREMONT)

I, Lynne Pahner, City Clerk of the City of Claremont, County of Los Angeles, State of California, hereby certify that the foregoing Ordinance No. 2000-12 was introduced at a regular meeting of said council held on the 28th day of November, 2000, that it was regularly passed and adopted by said city council, signed by the mayor, and attested by the city clerk of said city, all at a regular meeting of said council held on the 12th day of December, 2000, and that the same was passed and adopted by the following vote:

AYES:	Councilmembers:	Held, Baldonado, Leiga, Smith, Mayor Rosenthal
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAINED:	Councilmembers:	None

Lynne E. Pahner
City Clerk of the City of Claremont

Attachment F

Enabling statutes for City of San Jose Office of the Independent Police Monitor

Office of the Independent Police Auditor

Charter

Ordinance

Independence of the Police Auditor

City Organizational Chart

IPA Organizational Chart

IPA Biography

Staff Biographies

Staff Directory

IPA Logo History

Home > Government > Departments & Offices > Departments & Offices I-O > Office of the Independent Police Auditor > Establishment of the Office > Charter

Charter

Section 809 - Office of the Independent Police Auditor

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term, provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

The Independent Police Auditor shall have the following powers and duties.
(a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
(b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.
(c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

Added at election November 5, 1996

Section 809.1 - Independent Police Auditor - Power of Appointment

(a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.

(b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.

(c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

Added at election November 5, 1996

Office of the Independent Police Auditor

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Ordinance

Section 8.04.010 - Duties and Responsibilities

In addition to the functions, powers and duties set forth elsewhere in this code, the Independent Police Auditor shall have the duties and responsibilities set forth in this section.

A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.

1. The minimal number of complaints to be reviewed annually are:
    1. All complaints against police officers which allege excessive or unnecessary force; and
    2. No less than twenty percent of all other complaints
2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.
3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.
4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.

B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of officer involved shootings.

C. Community function.

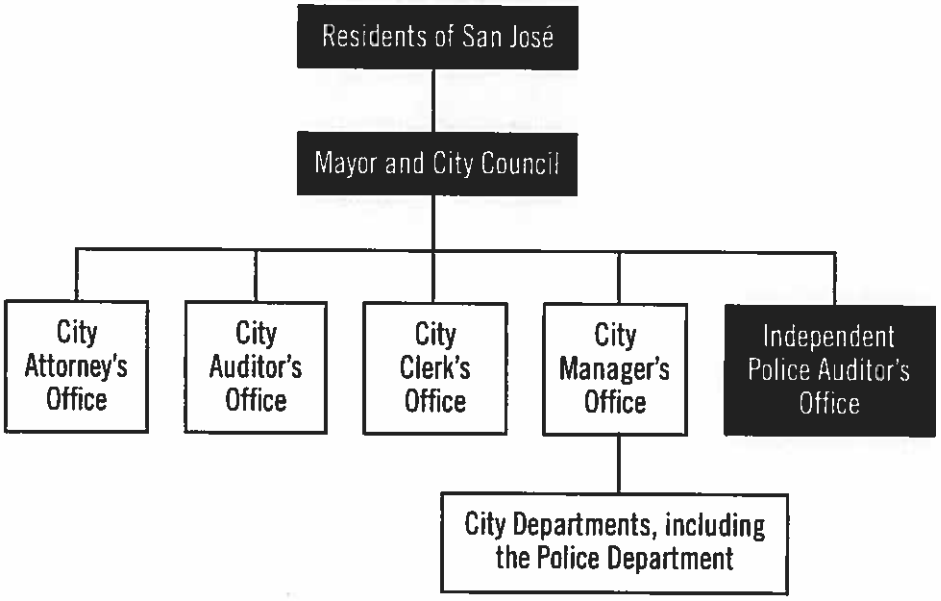
1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.
2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.

D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:

1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.
2. Analyze trends and patterns.
3. Make recommendations.

E. Confidentiality. The police auditor shall comply with all state laws requiring the confidentiality of police department records and information as well as the privacy rights of all individuals involved in the process. No report to the city council shall contain the name of any individual police officer. (Ords. 25213, 25274, 25922.)

City of San José Organizational Chart



Attachment G

Fact sheet for City of Santa Cruz Independent Police Auditor

INDEPENDENT POLICE AUDITOR

Robert H. Aaronson
3565 El Camino Real
Palo Alto, CA 94306
Phone: 650-565-8800
email

In January of 2003, the City Council created the Independent Police Auditor position. The auditor is charged with providing independent reviews of the citizen complaint process and reviewing and making recommendations regarding Police Department policies and practices.

Specifically, the Independent Police Auditor is responsible for the following:
- Review of Police Department Internal Affairs Investigations
- Review of Officer Involved Shootings
- Review of Police Department Policies and Procedures
- Independent Investigation of Citizen Complaints
- Reports to the City Council
- Being accessible to the Santa Cruz Community

The Public Safety Committee evaluates the activities of the Independent Police Auditor. This committee comprises three councilmembers and it is charged with the review of public safety issues.

Initiating a Citizen's Comment or Complaint

A comment or complaint may be filed if you have comments or concerns about specific Police conduct or actions. Any aggrieved party, friend, victim, family member or other third party who witnesses an incident thought to merit a comment or complaint can file. If a comment or complaint is filed, it is forwarded to the Professional Standards Unit and a supervisor will be assigned to conduct a formal investigation. The final investigation is forwarded to the Police Auditor for review. The investigation is reviewed for thoroughness, objectivity and to ensure that the evidence supports the finding. A citizen complaint is separate from any civil or criminal action. Once the investigation is complete, you will be notified of the results.

Comments or complaints about Police conduct or services should be submitted by mail, in person, or by fax to the Police Department using a Santa Cruz Police Department Citizen Comment Form. These forms are available at the Santa Cruz Police Department, the Independent Police Auditor's Office, or the City Clerk's Office.

The Police Auditor is available to meet with members of the public on an appointment basis by calling 650-565-8800. He can also be contacted via City email at: RAaronson@cityofsantacruz.com.

Attachment H

U.S. Department of Justice, Civil Rights Division, April 10, 2014 letter to the City of Albuquerque, re: Albuquerque Police Department

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General *Washington, DC 20530*

April 10, 2014

The Honorable Richard J. Berry
Mayor
City of Albuquerque
One Civic Plaza NW, 11th Floor
Albuquerque, NM 87102

Re: Albuquerque Police Department

Dear Mayor Berry:

We write to report the findings of the Department of Justice's civil investigation of the Albuquerque Police Department ("APD" or "the department"). Our investigation focused on allegations of use of excessive force by APD officers under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"). Section 14141 makes it unlawful for government entities, such as the City of Albuquerque and APD, to engage in a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or laws of the United States. The investigation was conducted jointly by the Civil Rights Division and the United States Attorney's Office for the District of New Mexico. This letter is separate from, and does not address, any federal criminal investigation that may be conducted by the Department of Justice.

Based on our investigation, we have reasonable cause to believe that APD engages in a pattern or practice of use of excessive force, including deadly force, in violation of the Fourth Amendment and Section 14141. Our investigation included a comprehensive review of APD's operations and the City's oversight systems. We have determined that structural and systemic deficiencies—including insufficient oversight, inadequate training, and ineffective policies—contribute to the use of unreasonable force. At the conclusion of this letter, we outline the remedial measures that we believe are necessary to ensure that force is used in accordance with the Constitution. In some instances, these recommendations build on measures and initiatives that are already underway within the department.

We recognize the challenges faced by officers in Albuquerque and in communities across the nation every day. Policing can be dangerous; at times, officers must use force, including deadly force, to protect themselves and others in the course of their work. The use of force by police is guided by the need to protect public safety and the duty to protect individuals from unreasonable searches and seizures under the Fourth Amendment. While most force used by APD officers is within these strictures, a significant amount falls short of these requirements. Although APD has taken steps to allay the public's concerns about the department's use of force,

these initiatives have been insufficient to ensure consistent accountability. They also have not addressed longstanding deficiencies that have allowed a culture of indifference to constitutional policing and insularity to develop within the department.

We are aware that the release of our findings occurs at a time of transition for the department's leadership and amid continued tension around recent officer-involved shootings. In particular, fatal confrontations with individuals experiencing mental health crises continue to cause significant public concern over the department's ability and willingness to consider the safety and well-being of the individuals in distress. Throughout our investigation, APD leadership has been receptive to our preliminary feedback and technical assistance. However, as outlined in this letter, more work is necessary to ensure that officers have the proper tools, guidance, training, and supervision to carry out their law enforcement responsibilities safely and in accordance with individuals' federal constitutional rights. We appreciate your expressed willingness to embrace many of the changes we have highlighted in our conversations with APD. We will continue to work collaboratively with you, the department's leadership, and other stakeholders to develop sustainable reforms that will resolve our findings. However, if we cannot reach an appropriate resolution, Section 14141 authorizes the Department of Justice to file a civil lawsuit to "eliminate the pattern or practice" of police misconduct. 42 U.S.C. § 14141.

We thank you, APD, and other city officials for your cooperation and professionalism during our investigation. We received invaluable assistance from the department's leadership, counsel, and rank-and-file officers. We also thank community members for bringing relevant information to our attention and for sharing their experiences with us. We are encouraged by the many individuals who took an active interest in our investigation and who offered thoughtful recommendations. We appreciate those individuals who came forward to provide information about specific encounters with APD, even when recounting such events was painful. We know that many residents care deeply about preventing the types of incidents described in this letter and have a genuine interest in supporting the many men and women of APD who uphold their oaths and keep Albuquerque safe. Based on this extensive cooperation and participation, we stand ready, and are encouraged that we will be able, to work together with the City, APD, and other stakeholders to address our findings methodically and expeditiously. By promoting constitutional policing, we will make APD more effective and will help restore the community's trust in the department.

I. SUMMARY OF FINDINGS

While officers may be required to use force during the course of their duties, they must do so respecting constitutional guarantees against unreasonable searches and seizures. For too long, Albuquerque officers have faced little scrutiny from their superiors in carrying out this fundamental responsibility. Despite the efforts of many committed individuals, external oversight is broken and has allowed the department to remain unaccountable to the communities it serves. Based on our investigation, we find that the department engages in a pattern or practice of using excessive force during the course of arrests and other detentions in violation of the Fourth Amendment and Section 14141. We find this pattern or practice in the following areas:

(1) Albuquerque police officers too often use deadly force in an unconstitutional manner in their use of firearms. To illustrate, of the 20 officer-involved shootings resulting in fatalities from 2009 to 2012, we concluded that a majority of these shootings were

unconstitutional. Albuquerque police officers often use deadly force in circumstances where there is no imminent threat of death or serious bodily harm to officers or others. Instead, officers used deadly force against people who posed a minimal threat, including individuals who posed a threat only to themselves or who were unarmed. Officers also used deadly force in situations where the conduct of the officers heightened the danger and contributed to the need to use force.

(2) Albuquerque police officers also often use less lethal force[1] in an unconstitutional manner. We reviewed a random sample of the department's use of force reports completed by officers and supervisors between 2009 and early 2013. Our sample consisted of over 200 force reports. We find that officers frequently misused electronic control weapons (commonly referred to by the brand name "Tasers"),[2] resorting to use of the weapon on people who are passively resisting, observably non-threatening but unable to comply with orders due to their mental state, or posed only a minimal threat to the officers. Officers also often used Tasers in dangerous situations. For example, officers fired Tasers numerous times at a man who had poured gasoline on himself. The Taser discharges set the man on fire, requiring another officer to extinguish the flames. This endangered all present. Additionally, Albuquerque police officers often use unreasonable physical force without regard for the subject's safety or the level of threat encountered. Officers frequently use takedown procedures in ways that unnecessarily increase the harm to the person. Finally, officers escalate situations in which force could have been avoided had they instead used de-escalation measures.

(3) A significant amount of the force we reviewed was used against persons with mental illness and in crisis. APD's policies, training, and supervision are insufficient to ensure that officers encountering people with mental illness or in distress do so in a manner that respects their rights and is safe for all involved.

(4) The use of excessive force by APD officers is not isolated or sporadic. The pattern or practice of excessive force stems from systemic deficiencies in oversight, training, and policy. Chief among these deficiencies is the department's failure to implement an objective and rigorous internal accountability system. Force incidents are not properly investigated, documented, or addressed with corrective measures.

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[1] For purposes of this letter, "less lethal force" means a force application not intended or expected to cause death or serious injury and which is commonly understood to have less potential for causing death or serious injury than conventional, more lethal police tactics. Nonetheless, use of less lethal force can result in death or serious injury.

[2] The Department uses the Taser brand electronic control weapons. Throughout this report, we will refer to these weapons as Tasers.

We found only a few instances in the incidents we reviewed where supervisors scrutinized officers' use of force and sought additional investigation. In nearly all cases, supervisors endorsed officers' version of events, even when officers' accounts were incomplete, were inconsistent with other evidence, or were based on canned or repetitive language. The department has also failed to implement its force policies consistently, including requirements that officers properly document their use of force, whether by lapel cameras, audio tapes, or in reports. The department does not use other internal review systems, such as internal affairs and the early intervention system, effectively. These internal accountability and policy failures combine with the department's inadequate training to contribute to uses of excessive force. Additionally, serious limitations in the City's external oversight processes have allowed many of these deficiencies to continue unabated.

As a result of the department's inadequate accountability systems, the department often endorses questionable and sometimes unlawful conduct by officers. The prior criminal history and background of individuals who are the subject of police force also typically receive greater scrutiny than the actions of officers. These practices breed resentment in the community and promote an institutional disregard for constitutional policing. For example, in a 2011 civil trial involving the shooting death of Andrew Lopez in which a state court found that an officer used unreasonable force, the City's expert, a training officer, testified that the officer's actions were "exemplary and that he (the expert) would use this incident to train officers on the proper use of deadly force."[3] The court concluded that the deadly force training provided to APD officers "is designed to result in the unreasonable use of deadly force."[4] We found other examples of similar praise or approval by police supervisors in force investigations we reviewed.

We recognize that the department started to institute some preliminary reforms to address our concerns before the conclusion of our investigation. However, the recent remarks by the police chief in response to the James Boyd shooting on March 16, 2014, demonstrate that more work is needed to change the culture of APD.[5] It is imperative that the department continue to build on these reforms and improve its training, recruitment, and internal review mechanisms. The failure to take meaningful remedial action places residents at risk of excessive force and promotes a culture of unjustifiable aggression that further alienates the department from the communities it serves. Making constitutional policing a core agency value and building systems of accountability to carry out that value will support the many APD officers who strive to and do uphold their oaths. This, in turn, will engender greater trust and confidence in APD from the community.

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[3] Findings of Fact and Conclusions of Law, *Higgins v. City of Albuquerque*, No. CV-2009-0915 (N.M. 2d Judicial Dist. filed on Aug. 19, 2009), ¶67.

[4] *Id.* at ¶66.

[5] On March 21, 2014, APD Chief Gorden Eden told reporters at a news conference that the force used against James Boyd was justified after officers responded to reports that an individual was camping illegally in the Sandia foothills. The Boyd shooting is under criminal investigation and is not addressed in this letter. Dan McKay, *Camper Turning from Officers When Shot*, Albuquerque Journal, Mar. 22, 2014, *available at* http://www.abqjournal.com/372844/news/video-camper-turning-away.html.

II. BACKGROUND

A well-functioning police department has the trust of the residents it protects, functions as a part of the community rather than insulated from it, and cultivates legitimacy when the public views it as engaging with them fairly and respecting the rule of law.[6] We started this investigation in November 2012 amid serious public concerns about APD's ability and willingness to fulfill these precepts.

In particular, the department faced community apprehension about its respect for constitutional guarantees against unreasonable force and its ability to protect the safety of all residents. These concerns stemmed from a number of high-profile incidents suggesting unreasonable conduct by some officers, including: (1) a high rate of shootings,[7] including more than 25 shootings in the two-year period before our investigation started; (2) high profile uses of less lethal force, including Taser deployments and physical force captured on video; (3) a large number of judgments and settlements[8] against the City signifying that many uses of force were unjustified; and (4) concerns raised by local leaders and advocates culminating in a City Council measure seeking an outside investigation by DOJ.[9] .

In September 2010, the Police Executive Research Forum ("PERF") started a nine-month study of the department's use-of-force policies and training, as well as the department's

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[6] *See* generally Tom Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in their Communities?*, 6 Ohio St. J. Crim. L. 231 (2008) (finding that cooperation with the police increases when the public views the police as respecting procedural justice and therefore as legitimate authorities); Tom Tyler, WHY PEOPLE OBEY THE LAW 138 (2006) (finding, in a study of over 1,500 Chicago residents, that "[i]nferences about efforts to be fair were the most important criterion of procedural fairness; concerns about politeness and rights (jointly labeled ethicality) were the second-most important"); Jason Sunshine & Tom Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 Law & Soc'y Rev. 513, 519-21 (2003) (study concluding that police treatment of the public and adherence to procedural fairness, such as accurately applying the law, has a stronger effect on police legitimacy than effectiveness in addressing crime).

[7] Dan Frosch, *Justice Dept. to Investigate the Police in Albuquerque*, N.Y. Times, Nov. 27, 2012, *available at* http://www.nytimes.com/2012/11/28/us/justice-dept-to-investigate-the-police-in-albuquerque.html?_r=0; Michael Haederle, *In Albuquerque, An Uproar Over Shootings by Police*, Los Angeles Times, Apr. 14, 2012, *available at* http://articles.latimes.com/2012/apr/14/nation/la-na-albuquerque-police-20120415.

[8] Jeff Proctor, *Ellis Case Would Boost APD Payouts*, Albuquerque Journal, Apr. 7, 2013, *available at* http://www.abqjournal.com/186038/news/ellis-case-would-boost-apd-payouts.html; Jeff Proctor, *Police Misconduct Costly*, Albuquerque Journal, Feb. 6, 2012, *available at* http://www.abqjournal.com/85625/news/police-misconduct-costly.html.

[9] Council Bill No. R-11-247 (August 2011) (requesting a DOJ investigation into "whether there have been incidents or patterns of civil rights violations by the Albuquerque Police Department"). You vetoed the measure, citing the City's request for a review of the department by the Police Executive Research Forum. Mayor Berry's Veto Message on R-11-247 (Aug. 18, 2011), *available at* http://www.cabq.gov/mayor/news/read-mayor-berrys-veto-message-on-r-11-247/.

management systems. PERF did not evaluate whether officers used force appropriately.[10] Indeed, the report noted that "[r]einvestigating officer-involved shooting cases was outside the scope of this study as specified by the city."[11] Instead, PERF focused on "common factors" in the shootings and trends and patterns in the uses of less lethal force, such as frequency of weapons use, officer and subject demographics, and the types of force used.[12] The PERF report noted that shootings increased, even though "both violent crime and assaults on officers have been on a downward trend."[13] The PERF report found that multiple officers were present at 81% of the shooting incidents they reviewed.[14] Given the level of misconduct we uncovered, the presence of multiple officers is significant because officers have a duty to intervene to prevent other officers from using excessive force. *Vondrak v. City of Las Cruces*, 535 F.3d 1198, 1210 (10th Cir. 2008), *cert. denied,* 555 U.S. 1137 (2009) (internal citations omitted). The report also noted that in only a small percentage of shooting incidents (11%) did the officer employ less-lethal options before resorting to deadly weapons.[15] The PERF report also noted the significant use of Tasers and pointed out serious limitations in APD's ability to track accurate force data.[16] Our investigation, which included incidents occurring after PERF's review, revealed similar problems.

The Albuquerque Police Department is the largest law enforcement agency in New Mexico, with approximately 1,000 sworn officers and over 600 civilian employees.[17] We recognize that it is a modern policing agency that has made efforts to implement innovative programs, such as the Crisis Intervention Team ("CIT") and the Crisis Outreach and Support Team ("COAST"), which work to diffuse potentially harmful situations and assist people in crisis by providing them with access to mental health care. The department has also partnered with other agencies to maintain the Family Advocacy Center, a safe space that focuses on the needs of victims of domestic violence, sexual abuse, and other trauma. The department has received national accreditation by law enforcement executive associations[18] and has invested in technologies, such as lapel cameras, to address community concerns about officer accountability.

While these measures are noteworthy, the public's confidence in the department remains shaken over concerns that the department is unable to control its officers' use of excessive force. The use of technology and other initiatives have had limited impact in increasing accountability or promoting safer encounters with individuals suffering from mental illness. For instance,

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10 PERF, *Review of Use of Force in the Albuquerque Police Department*, 41, 48 (June 23, 2011), *available at* http://alibi.com/media/docs/Police%20Executive%20Research%20Forum's%20review%20of%20APD%20shootings.pdf.

11 *Id.* at 10.

12 *Id.*

13 *Id.* at 2.

14 *Id.* at 14.

15 *Id.*

16 *Id.* at 48.

17 The Albuquerque Police Department's Strategic Plan Fiscal Year 2013 through Fiscal Year 2017, available at http://www.cabq.gov/police/internal-reports.

18 For example, the department is accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc., which is the credentialing authority through organizations such as the International Association of Chiefs of Police and the National Sheriff's Association, among others. We do not endorse such accreditation. We simply note that such accreditation exists.

although the department is among a few of its size to mandate the use of lapel video cameras, the implementation has been highly inconsistent. The availability of trained CIT officers has not kept up with the needs in the community, and de-escalation techniques employed by these officers are too easily dismissed by heavily-armed tactical units in situations where individuals under police scrutiny are not posing an immediate threat of harm. The mental health professionals and staff on COAST teams operate in a larger mental health system with limited resources and options. It is critical that the City and the department take additional measures to identify, address, and prevent excessive force to protect the public and rebuild the community's trust. Recent shootings have heightened and confirmed the need for further reform.

III. METHODOLOGY AND LEGAL STANDARDS

We conducted our evaluation of the department's use of force in three major phases: fact-gathering, incident analysis based on applicable legal standards, and a comprehensive review of policies and practices to identify significant factors that cause or contribute to misconduct. Our review was informed by many sources, including: (1) individuals participating in community town hall meetings and separate witness interviews; (2) agency stakeholders, such as the department's officers, supervisors, and command staff; (3) other stakeholders in the City, including the officers' union representatives, police oversight commissioners and investigative staff, City officials, and community group leaders; (4) department documents, including use-of-force and shooting files; and (5) information and insights provided by our expert police consultants.

During the first phase of our investigation, we sought relevant information on the department's use of force and worked to gain a comprehensive understanding of the department, including its leadership, systems of accountability, operations, and community engagement. We conducted onsite tours in Albuquerque in December 2012, February and March 2013, and January 2014. Collectively during these tours, we met with command staff and officers of various ranks; representatives from the officers' union; leadership and officers within the internal affairs department; the police academy; and each area command, among others. We spoke to current and former officers in Albuquerque by video conference and telephonically. We also met with stakeholders outside of the department, including the Independent Review Officer, members of the Police Oversight Commission, and community group leaders.[19]

In this fact-gathering phase, we also sought to learn more from those who had direct interactions with the department. We held four community town hall meetings in different regions of the City and conducted initial and follow-up interviews of hundreds of people. We also interviewed dozens of people through additional community outreach efforts. We verified these accounts by reviewing available documentary, photographic, and video support, as well as department records.

In the second phase of our investigation, we carefully analyzed the information we obtained and applied the relevant legal standards to determine whether the department's use of force was justified under federal law. We reviewed an extensive volume of documents provided to us by the department, including a random sample of more than 200 force reports from 2009

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[19] *See* a more in depth description of the Police Oversight Commission and the Independent Review Officer at B. 7 *infra*.

through early 2013.[20] We also reviewed the files of officer-involved shootings between 2009 and 2012 that resulted in fatalities. Our review of individual use-of-force complaints and reports informed our investigation into whether a pattern or practice of excessive force exists.

A pattern or practice may be found where incidents of violations are repeated and not isolated instances. *Int'l Bd. of Teamsters v. United States*, 431 U.S. 324, 336 n.16 (1977) (noting that the phrase "pattern or practice" "was not intended as a term of art," but should be interpreted according to its usual meaning "consistent with the understanding of the identical words" used in other federal civil rights statutes). Courts interpreting the terms in similar statutes have established that statistical evidence is not required. *Catlett v. Mo. Highway & Transp. Comm'n*, 828 F.2d 1260, 1265 (8th Cir. 1987) (interpreting "pattern or practice" in the Title VII context). A court does not need a specific number of incidents to find a pattern or practice, and it does not need to find a set number of incidents or acts. *See United States v. W. Peachtree Tenth Corp.*, 437 F.2d 221, 227 (5th Cir. 1971) ("The number of [violations] . . . is not determinative. . . . In any event, no mathematical formula is workable, nor was any intended. Each case must turn on its own facts.").

We assessed officers' conduct under the Fourth Amendment's "right of people to be secure in their persons . . . against unreasonable searches and seizures." U.S. CONST. amend. IV. Courts apply the Fourth Amendment objective reasonableness standard to all claims of excessive force, including deadly force. *Graham v. Connor*, 490 U.S. 386 (1989); *Tennessee v. Garner*, 471 U.S. 1 (1985). Under this standard, "the nature and quality of the intrusion on the individual's Fourth Amendment interests" is balanced against the "countervailing government interests at stake." *Graham*, 471 U.S. at 396 (internal quotation marks and citations omitted). Ultimately, in evaluating whether there are violations of the Fourth Amendment, the courts are tasked with determining whether the "officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397 (internal quotation marks and citations omitted); *see also Casey v. City of Federal Heights*, 509 F.3d 1278, 1281 (10th Cir. 2007).

Guiding this balancing of interests are several non-exclusive factors: if a crime was suspected, the severity of that offense; whether the person posed an immediate threat to the safety of the officer or others; and whether the person was actively resisting arrest or attempting to evade arrest. *Graham*, 490 U.S. at 396; *Garner*, 471 U.S. at 8-9. The Tenth Circuit has also considered other factors, including: whether the officer's own conduct contributed to the need to use force; whether the officer issued a warning and the person had the opportunity to comply; whether the person was mentally ill; and whether, during the course of the interaction, new facts developed requiring a change in the amount of force required. *Fancher v. Barrientos*, 723 F.3d 1191, 1201 (10th Cir. 2013) (holding that repeated shooting at person is unreasonable where no threat remained); *Cavanaugh v. Woods Cross City*, 625 F.3d 661, 666 (10th Cir. 2010) ("It is not objectively reasonable to ignore specific facts as they develop (which contradict the need for this amount of force [Taser]), in favor of prior general information."); *Fogarty v. Gallegos*, 523 F.3d 1147, 1159-60 (10th Cir. 2008) (considering whether officers' conduct contributed to the need to

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[20] We reviewed incidents reported by APD as uses of force. APD policy requires that officers report "police actions" that result in death, great bodily harm, or injury. "Police action" is defined as "any offensive or non passive defensive action by an officer, or some intentional action under his/her immediate control." APD Use of Force Policy, 02-52.

use tear gas); *Casey*, 509 F.3d at 1285 (considering whether a person was provided an opportunity to comply before an officer used a Taser); *Allen v. Muskogee, Okla.*, 119 F.3d 837, 840 (10th Cir. 1997) (in shooting, considering person's suicidal state and officer's conduct prior to the person's threat of force); *Cardall v. Thompson*, 845 F. Supp. 2d 1182, 1192 (D. Utah 2012) (noting that person's "mental health also weighed against the use of a [T]aser"). Courts weigh these considerations to determine the reasonableness of the officer's conduct in light of the totality of the circumstances.

In essence, the courts evaluate the full context surrounding the force action. While refraining from engaging in a 20/20 hindsight judgment of the force used, courts review the situation and threat faced by the officer. This also includes the type of force used by the officer—whether that force was physical, the use of weapons such as a Taser or chemical agents, or the use of a firearm. More severe forms of force require more justification. *Cordova v. Aragon*, 569 F.3d 1183, 1190 (10th Cir. 2009) (reasoning that the "general dangers posed" by a reckless driver fleeing the police "does not justify a shooting that is nearly certain to cause the suspect's death"); *Cavanaugh*, 625 F.3d at 665 (holding that an officer's use of the "quiet severe" intrusion of a [T]aser against an unarmed misdemeanant who posed no threat was unreasonable); *Casey*, 509 F.3d at 1286 ("[I]t is excessive to use a Taser to control a target without having any reason to believe that a lesser amount of force—or a verbal command—could not exact compliance."). Courts recognize that while some force may be required to apprehend a person, such force must be limited to what is "reasonably necessary to effect a lawful seizure." *Fisher v. City of Las Cruces*, 584 F.3d 888, 895 (10th Cir. 2009) (holding that a rough handcuffing of a person was unreasonable where no threat remained). We applied these legal standards in our review of APD's force incidents.

In the final phase of our review, we sought to evaluate the causes of, and the factors contributing to, the use of unreasonable force. We reviewed internal and external APD documents addressing a variety of operational issues, including policies and procedures, recruitment, training, internal accountability measures, assessment reports, task force evaluations, and investigations. We were aided in this determination by our expert police consultants who have significant experience in providing constitutional policing services, including reducing improper uses of force, ensuring officer safety and accountability, and promoting respectful police interactions with the community. These consultants joined us during our onsite tours of the department, participated in our town hall meetings, conducted in-person and telephonic interviews with civilians and officers, reviewed APD policies and procedures, and reviewed force and shooting reports. The experience and knowledge of these nationally-recognized law enforcement experts helped to inform our findings. In sum, we relied on a variety of sources to reach the conclusions reported here.

IV. FINDINGS

We have reasonable cause to believe that officers of the Albuquerque Police Department engage in a pattern or practice of use of excessive force, including unreasonable deadly force, in violation of the Fourth Amendment and Section 14141. A significant amount of the force we reviewed was used against persons with mental illness and in crisis. APD's policies, training, and supervision are insufficient to ensure that officers encountering people with mental illness or in distress do so in a manner that is safe and respects their rights. The use of excessive force by APD officers is not isolated or sporadic. The pattern or practice of excessive force stems from

systemic deficiencies in oversight, training, and policy. Chief among these deficiencies is the department's failure to implement an objective and rigorous internal accountability system. Force incidents are not properly investigated, documented, or addressed with corrective measures. Other deficiencies relate to the department's inadequate tactical deployments and incoherent implementation of community policing principles.

A. APD Engages in a Pattern or Practice of Unconstitutional Use of Deadly Force.

We find that the Albuquerque Police Department engages in a pattern or practice of unreasonable use of deadly force in officers' use of firearms. We reviewed all fatal shootings by officers between 2009 and 2012[21] and found that officers were not justified under federal law in using deadly force in the majority of those incidents. This level of unjustified, deadly force by the police poses unacceptable risks to the Albuquerque community.

As noted above, the Fourth Amendment permits police officers to use deadly force under certain circumstances, and the courts have identified specific factors they consider in determining the reasonableness of a use of force based on the totality of the circumstances. Those factors guided our analysis of each fatal police shooting in the 2009 to 2012 time frame. For each officer-involved shooting, we reviewed all police reports from the incident; interviews with witnesses and the officers involved; memoranda from the internal affairs division; reports by the Independent Review Officer and the Police Oversight Commission; reports from the District Attorney's Office; lapel camera footage and audio tape, if they were available; in some cases, accounts that witnesses and family members of those killed gave directly to us; and other relevant information.

Below is a discussion of the most prevalent factors that lead us to find police shootings to be unjustified under federal law, with examples drawn from some of those incidents. We have identified other force incidents that further illustrate the pattern or practice of use of excessive force.

1. Albuquerque police officers shot and killed civilians who did not pose an imminent threat of serious bodily harm or death to the officers or others.

Like other uses of force, the reasonableness of deadly force is evaluated through an objective standard: whether a reasonable officer in the same circumstances—facing the same tensions and uncertainties, and forced to make split-second decisions—would have used deadly force. *See Graham*, 490 U.S. at 396-97. Police officers are permitted to use deadly force to prevent escape when they have "probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." *Garner*, 471 U.S. at 3; *Weigel v. Broad*, 544 F.3d 1143, 1151-52 (10th Cir. 2008). The Tenth Circuit has cautioned that this statement must not be read too broadly: "It does not mean that any risk of physical harm to others, no matter how slight, would justify any application of force, no matter how certain to cause death." *Cordova*, 569 F.3d at 1190 (discussing *Scott v. Harris*, 550 U.S. 372 (2007)). In *Cordova*, the Tenth Circuit determined that the general risks created by a motorist's fleeing from

[21] Because we wanted to examine both the reasonableness of uses of force and the department's responses to them, we focused on cases closed by APD.

the police are, without more, insufficient to justify a shooting that is nearly certain to cause the suspect's death.

We identified several cases in which officers shot and killed civilians who did not pose an immediate threat of death or serious bodily injury to officers or others. For instance, in February 2009, an officer used unreasonable force when he shot and killed Andrew Lopez after officers attempted to pull Lopez over for driving with dim headlights and no tail lights. According to officers, they suspected the vehicle had been involved in a prior incident in which a gun was reported. However, the vehicle Lopez was driving did not match the make, color or type of vehicle that was reported earlier. After leading the officers on a low-speed vehicle chase for more than ten minutes, Lopez stopped the vehicle, exited, and ran toward a driveway of a residence where a truck was parked. One officer gave chase on foot, followed by approximately four other officers. The primary officer stated that he believed Lopez was armed with the biggest handgun he had ever seen and ordered him to drop it. When Lopez reached a fence and began to turn, the officer shot at Lopez three times. One of the shots struck Lopez, causing a non-lethal bullet wound. Lopez fell to the ground and lay motionless on his back. The officer walked around the truck and fired a fourth shot into Lopez's chest, piercing his lung and heart and causing his death. Lopez was unarmed. The officer fired the fourth and final shot when Lopez was not pointing anything at officers and while he lay on his back already wounded.

In a bench trial in state court, a judge found that the officers' testimony about the threat they perceived from Lopez was not credible. The judge concluded that the shooting was unreasonable. The judge further found that the training provided to APD officers on use of deadly force "is not reasonable and is designed to result in the unreasonable use of deadly force."[22] The judge found the City principally responsible for Lopez's death and awarded his estate approximately $4.25 million.

In another incident, in October 2009, an officer shot and killed Dominic Smith, who was unarmed and fleeing the scene of a robbery on foot. Smith did not pose a threat of death or serious bodily injury to officers or others. Smith used a threatening note to rob a pharmacy for drugs before fleeing on foot. No one at the pharmacy saw Smith with any kind of a weapon and he did not commit acts of violence during the alleged robbery. An officer apprehended Smith just minutes later across the street from the pharmacy and stated that Smith appeared heavily intoxicated. The officer stated that he saw no weapons. The officer, with his gun drawn, ordered Smith to stop, but Smith continued walking away from the officer. The officer returned to his car, retrieved an assault rifle, and again confronted Smith, who continued to disregard the officer's orders. With Smith just a few feet away, the officer claimed that Smith motioned near his waist, which the officer believed to indicate that Smith was reaching for a gun. The officer shot and killed Smith. Smith did not have a gun. A reasonable officer confronting Smith as he fled from the pharmacy thus would not have believed that Smith posed an immediate threat of death or serious bodily harm. As the Supreme Court stated in *Garner*, "A police officer may not seize an unarmed, nondangerous suspect by shooting him dead." *Id.* at 11.

In another use of deadly force, in May 2011, an officer shot and killed Alan Gomez, who would not allow his brother and his girlfriend to leave their house. Gomez was unarmed and did

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[22] Findings of Fact and Conclusions of Law, *Higgins v. City of Albuquerque*, No. CV-2009-0915 (N.M. 2d Judicial Dist. filed on Aug. 19, 2009), ¶66.

not pose an immediate risk of death or serious bodily harm to the individuals in the house or officers when he was shot. The incident began in the middle of the night when the girlfriend called APD because Gomez was refusing to let her and her boyfriend leave their house. Officers arrived and surrounded the house. As officers attempted to negotiate with Gomez, police dispatchers spoke on the telephone to the girlfriend who originally called the police. She initially told a dispatcher that Gomez was in possession of a gun. Before the shooting, she told the dispatcher that Gomez no longer had a gun. Officers observed Gomez as he walked in and out of the front door several times without incident. APD officers had not observed Gomez exhibiting any threatening behavior toward the police or the individuals in the house. After officers had been present for nearly an hour, Gomez again came out of the front door briefly and began to turn to go back inside. As he did so, an officer shot Gomez once and killed him. When officers approached Gomez to render aid, they saw that he was not holding a gun and no other object was found anywhere near him

When the officer shot Gomez, the circumstances would not have suggested to a reasonable officer that there was an immediate threat. The officers had not confirmed that Gomez was armed. With the exception of the shooting officer, who gave inconsistent statements, officers did not observe Gomez hold, raise, or aim a gun. No one's life was in immediate danger and an APD negotiator was on his way to the scene. There were insufficient facts to lead officers to believe that Gomez "pose[d] a significant risk of death or serious physical injury to the officer or others." *Garner*, 471 U.S. at 3. Even if officers were concerned that Gomez might have been going back to harm the individuals inside the house, that risk of future harm was not enough to justify the near certainty of Gomez's death from the firearm discharge. *See Cordova*, 569 F.3d at 1190. Gomez's family sued APD and in December 2013, the parties reached an out-of-court settlement in the amount of $900,000. This was the shooting officer's third shooting in the line of duty. He shot and killed a man in 2004 while serving with the New Mexico State Police and wounded another man in 2010. None of the three shooting subjects was armed. The officer joined APD in 2007 as a lateral hire.

2. Albuquerque police officers used deadly force on individuals in crisis who posed no threat to anyone but themselves.

Just as officers are not reasonable in using deadly force when a person poses little or no threat to officers or others, officers are also unreasonable in using deadly force on individuals in crisis who pose a threat only to themselves. *Walker v. City of Orem*, 451 F.3d 1139, 1160 (10th Cir. 2006) (concluding that there were sufficient facts to support a Fourth Amendment violation where the officer acted precipitously in shooting the subject who posed a danger only to himself when he held a box cutter to his wrists); *see Sevier v. City of Lawrence, Kan.*, 60 F.3d 695, 699-701 (10th Cir. 1995) ("The reasonableness of [officers'] actions depends both on whether the officers were in danger at the precise moment that they used force and on whether [officers'] own reckless or deliberate conduct during the seizure unreasonably created the need to use such force.") Although reasonable officers need not await the "glint of steel" before taking self-protective action, courts have looked at several factors to assess the threat to officers when an individual is armed and threatening harm to himself. *Estate of Larsen v. Murr*, 511 F.3d 1255, 1260-61 (10th Cir. 2008) (internal citations omitted). These non-exclusive factors include: (1) whether the officers ordered the suspect to drop his weapon, and the suspect's compliance with police commands; (2) whether any hostile motions were made with the weapon towards the

officers; (3) the distance separating the officers and the suspect; and (4) the manifest intentions of the suspect. *Id.* at 1260.

In January 2010, an officer shot and killed Kenneth Ellis, III, a 25-year-old veteran who was suffering from post-traumatic stress disorder. Officers suspected Ellis of vehicle theft and pulled him over in a parking lot. Ellis exited the vehicle holding a gun pointed to his head. Ellis continued to hold the gun to his head as he made several phone calls and the officers attempted to negotiate with him. After several minutes, an officer shot Ellis one time in the neck and killed him.

While it is true that Ellis was holding a gun and thus presented a clear threat of harm, there was never any indication from Ellis' words or actions that he intended to use the gun on anyone but himself. During his encounter with police, he held the gun to his own head and did not point at police or threaten them with harm. It was thus unreasonable for the officer to have used deadly force on Ellis. In addition, when officers are dealing with suicidal subjects, their failure to try to de-escalate the situation is a relevant factor in evaluating the reasonableness of any force they might use. *Allen*, 119 F.3d at 841-44. In February 2013, a judge in a state civil suit granted summary judgment in favor of the plaintiffs, finding that the shooting violated the Fourth Amendment.[23] A jury later returned a verdict finding the City and the officer who shot him liable for Ellis' death and awarding more than $10 million in damages.

3. Albuquerque police officers' own recklessness sometimes led to their use of deadly force.

In evaluating the totality of the circumstances surrounding an officer's use of deadly force, courts have considered "whether the officers' own reckless or deliberate conduct during the seizure unreasonably created the need to use such force." *Medina v. Cram*, 252 F.3d 1124, 1132 (10th Cir. 2001) (citations and internal quotation marks omitted). We reviewed several incidents that provide reasonable cause to believe that the officers were reckless and that their recklessness contributed significantly to their decision to use deadly force.

For example, in March 2012, an officer shot Daniel Tillison after approaching him without waiting for backup. The officer was responding to an anonymous call about an individual selling stereo equipment in a parking lot. When the officer arrived, Tillison was sitting in his car, which the officer believed might be stolen (he had received conflicting information prior to making contact with Tillison). The officer approached the driver's side of the car with his gun drawn. This is an important fact. If the officer believed Tillison posed such a threat to the officer or public safety that it was necessary to draw his weapon, it is not at all clear why the officer did not take cover and wait for other officers to assist him. There was no exigency that required the officer to act immediately; it was the officer who decided when to approach Tillison. The officer spoke to Tillison, recounting that Tillison was evasive and appeared to be reaching for something in the car. Tillison tried to get out of the car, but the officer pushed the door closed. Tillison then backed into the officer's vehicle and an adjacent truck. The officer shot at one of the vehicle's tires. As Tillison attempted to drive forward, the officer stated that he saw something that resembled a gun in Tillison's hand and that Tillison

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[23] Order on Motion for Summary Judgment, *Wharton v. City of Albuquerque*, No. CV-2010-06590 (N.M. 2d Judicial Dist. filed on May 28, 2010).

gave him a "warrior stare." The officer then shot directly at Tillison, killing him. The item in Tillison's hand was a cell phone; police found no guns in the car. Based on our review of the facts, Tillison did not pose an immediate threat of death or serious bodily harm and the shooting could have been avoided if the officer had waited for other officers to assist him. The officer was not in control of the situation because he approached Tillison alone and resorted to deadly force.

This incident bears striking similarities to the situation encountered by police in *Zia Trust v. Montoya,* 597 F.3d 1150, 1153 (10th Cir. 2010). In *Zia Trust*, an officer rushed up to a van that he believed was being driven by a domestic violence suspect. The officer had drawn his weapon and approached the van alone. *Id.* The suspect tried to drive his van at the officer, but it was stuck on a pile of rocks and could only move about a foot. *Id.* The officer shot the driver of the van, and he later died. *Id.* The Tenth Circuit found that the officer's recklessness in how he approached the driver could support a finding that the officer's use of deadly force was unreasonable. *Id.* at 1154-55.

In March 2010, a plainclothes detective shot and killed Mickey Owings after Owings' car was boxed in by an unmarked APD vehicle in a commercial parking lot. The encounter began because officers had received information that a stolen car was located in the parking lot. Several officers positioned unmarked cars in the parking lot around the suspected stolen car. Owings then drove a different car into the parking lot and parked directly next to the stolen car. A passenger got out of Owings' car and started to get in the stolen car, and officers drove one unmarked car directly behind Owings while the plainclothes detective approached Owings' car on foot. Owings backed his car into the unmarked police car and another civilian's car, and as he did so, the detective drew his gun, pointed it at Owings, and ran closer to Owings' car. Owings then drove straight forward into two parked cars. As he did so, the detective shot Owings. Owings continued driving forward and actually pushed the two empty, parked cars in front of him out of the way. Owings then drove out of the parking lot but soon seems to have lost consciousness on a nearby road. His car slowed to a stop, and when officers got to him, he had died. Owings was not armed.

The department's use of force policy permits officers to fire at the driver of a moving vehicle only when the car itself poses a threat of death or serious physical injury to the officer or others. (As noted below, the better policy, followed by many departments, is to prohibit officers from firing their weapons at cars altogether.) The use of force policy limits the circumstances in which officers may shoot at drivers because of the substantial risks that are involved: the officer may miss and hit an innocent civilian or fellow officer, or the driver may become incapacitated, leaving the moving car completely out of control. Owings did not pose a threat of death or serious physical injury to the officer or anyone else; he was driving straight into unoccupied, parked cars when he was shot. This damage to property, as serious as it was, did not justify taking Owings' life. The detective who shot Owings could very easily have missed and hit one of the innocent civilians walking through the parking lot; moreover, after Owings was shot, the probability that he would injure someone with his car increased dramatically. *Brosseau v. Haugen*, 543 U.S. 194, 199-201 (2004) (collecting federal appellate cases on police shootings at moving cars and acknowledging that such shootings can be unreasonable); *Vaughan v. Cox*, 343 F.3d 1323, 1333 (11th Cir. 2003) ("[A] reasonable officer would have known that firing into the cabin of a pickup truck, traveling at approximately 80 miles per hour on Interstate 85 in the morning, would transform the risk of an accident on the highway into a virtual certainty."). *But*

see Scott, 550 U.S. at 382-84 (2007) (noting that a car can itself be a deadly weapon that can justify the use of deadly force).

Other instances of officer recklessness that led to unreasonable uses of deadly force involved officers from the department's SWAT unit who acted without proper discipline or control. SWAT stands for Special Weapons and Tactics, and officers assigned to SWAT units are generally among the most highly trained in a police department. Officers in the SWAT unit are entrusted with complex weaponry and are called upon to handle the most dangerous situations that police encounter. SWAT units typically operate under strict protocols and carry out operations in a highly planned and organized fashion.

In force incidents we reviewed, we found instances in which the SWAT unit did not operate with the discipline and control that would be expected of them, and this lack of discipline contributed to unreasonable uses of deadly force. The officer who shot and killed Alan Gomez, for example, was assigned to the SWAT unit. When he arrived on the scene, the officer took a position near the house where Gomez was keeping his brother and his girlfriend from leaving without consulting the commanding officer and without following any kind of a plan for handling the crisis. He also did not seek or obtain the approval of the commanding officer before using deadly force. He acted on his own authority from the moment he arrived on the scene until he fired his weapon. The recklessness of his behavior at the scene supports our finding that his use of deadly force was unreasonable. *Zia Trust*, 597 F.3d at 1154-55.

The officer who shot and killed Kenneth Ellis was not a member of the SWAT unit, but commanding officers within and over SWAT were present when Ellis was shot. The department's reports on the shooting make it clear that the SWAT commanding officers failed to exert control over the scene, such as by making a plan for handling the crisis, determining where officers should be positioned, or deciding what roles each officer would fulfill, though our consultants would have expected them to take on these roles and establish control and lines of authority. The lack of scene control contributed to a chaotic environment and allowed the shooting officer to act on his own accord when he shot and killed Ellis. *See Allen*, 119 F.3d at 841-44 (noting that the failure to follow protocols can be a ground for liability for the use of deadly force).

B. APD Engages in a Pattern or Practice of Unconstitutional Use of Less Lethal Force.

We find that the department engages in a pattern or practice of unreasonable use of less lethal force. There is a pattern of APD officers using force that is unnecessary and unreasonable against individuals who pose little, if any, threat, or who offer minimal resistance. Officers too precipitously resort to the use of Tasers, prone restraints (referred to as "face-down stabilization techniques" by APD), leg sweeps, front kicks, face-down arm-bar takedowns, and strikes to legs and thighs. We reviewed incidents where officers applied force against individuals who were unable to understand or yield to commands but posed a minimal threat to the officers. Many subjects of excessive force had indications of mental illness, physical disabilities, intoxication, and other incapacity. In most instances, these individuals were engaging in lawful activities or committing minor infractions.

We formed our conclusions about APD's practices based on a review of APD's own documentation. This information enabled us to review the identical documents that APD

supervisors and internal affairs investigators used in making force determinations. This information also allowed us to assess the reasonableness of each incident and the supervisory or investigatory process that followed. In particular, we reviewed 200 incidents through a sampling of use of force reports and internal affairs investigations for a period spanning January 2009 through April 2013. Of the force incidents that we reviewed, APD identified less than 1% of these reports as unreasonable uses of force. In contrast, we concluded that approximately a third of the same incidents involved officer conduct that was unreasonable. The disparity between our conclusions is striking and strongly suggests a pervasive and deliberate leniency in supervisory oversight and accountability.

Although we found unreasonable uses of physical force, such as punches and kicks, the overwhelming majority of our use of force reviews involved inappropriate deployment of Tasers.[24] Residents have complained, and we were able to confirm, that APD officers used Tasers in a manner that was disproportionate to the threat encountered and in situations where lesser force options were more appropriate. Officers engaged in a pattern of using Tasers unreasonably, including in situations that placed individuals at risk of death or serious bodily harm; against individuals experiencing mental health crises, or who, due to inebriation or inability, could not comply; against subjects requiring medical treatment; against unarmed subjects; and against individuals in a punitive manner. We also identified instances where officers fired Tasers numerous times, even when multiple officers were present to help resolve the situation without the need for continued uses of force. The over-reliance on Tasers in situations where more effective and less extreme options, including verbal de-escalation techniques, were far more appropriate, contributes to the pattern or practice of excessive force. *Walter v. Gomez*, No. 12-1496, 2014 U.S. App. LEXIS 4493, at *48 (10th Cir. Mar. 11, 2014) ("Under prevailing Tenth Circuit authority, 'it is excessive to use a Taser to control a target without having any reason to believe that a lesser amount of force—or a verbal command—could not exact compliance.'") (quoting *Casey,* 509 F.3d at 1286).

A Taser is "a weapon that sends up to 50,000 volts of electricity through a person's body, causing temporary paralysis and excruciating pain." *Cavanaugh*, 625 F.3d at 664. Any use of Tasers constitutes a severe intrusion of the interests protected under the Fourth Amendment. *Id.* at 665. The total amount of electricity and severity of the pain inflicted by a Taser depends on the type of application and how frequently electricity is fired into a subject. *See Casey*, 509 F.3d at 1285. Although a Taser may not constitute deadly force, its use unquestionably "seizes" a subject in an abrupt and violent manner. *Cavanaugh,* 625 F.3d, at 664. Inappropriate use of these weapons can result in death.[25] A Taser therefore should be considered, at a minimum, an intermediate level of force.

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[24] APD's policies requiring officers to report uses of force with injury and an emphasis on weapons in its data collection process may account for the lower number of reports involving uses of physical force, such as punches, kicks, and takedowns. *See infra* Section IV.C.3. These deficiencies also suggest strongly that APD officers may be underreporting their use of force. PERF also identified missing data and other problems with APD's force tracking process, including incomplete data on the use of weapons. PERF Report, *supra* note 11, at 46-49.

[25] National Institute of Justice, *NIJ Special Report: Study of Deaths Following Electro Muscular Disruption*, (May 2011), *available at* https://www.ncjrs.gov/pdffiles1/nij/233432.pdf.

Most deaths and adverse reactions typically occur with multiple or prolonged deployments of Tasers. Law enforcement research organizations have cautioned that continuous Taser activations of greater than 15 seconds, or three activation cycles, may increase the risk of death or serious injury.[26] In cases we reviewed, officers used more than three cycles in encounters with individuals, without heightened scrutiny from supervisors. Taser deployments can also potentially produce other secondary or indirect effects that may result in death (e.g., using a Taser against a person on a steep slope or tall structure, resulting in a significant fall; deploying a Taser near flammable materials such as gasoline, explosives, volatile inhalants, or flammable propellants used in pepper spray; and using a Taser on a person who is in water). *Id.* at *6.* Effective Taser training and oversight are essential to ensure that officers and supervisors understand the circumstances when Taser use is appropriate and when it needlessly exposes an individual to grievous harm.

1. Albuquerque police officers used force against individuals who were passively resisting and posed a minimal threat.

Albuquerque police officers used force that was disproportionate to the threat or resistance posed by civilians. Even where some force is justified, the particular level of force used may still be excessive if it is disproportionate to the resistance or threat encountered. *Casey*, 509 F.3d at 1282 (holding that where a person is suspected of committing a minor misdemeanor, this fact reduces the level of force that was reasonable for an officer to use); *Walker*, 451 F.3d at 1159-60 (no immediate threat where suspect had a knife if he "had not affirmatively led anyone to believe that he had a firearm and had not made any violent threats toward the officers or others"); *Diaz v. Salazar*, 924 F. Supp. 1088, 1094-95 (D.N.M. 1996) (a suspect's refusal to drop his knife is insufficient to establish an immediate threat where suspect does not lunge at the officers or otherwise threaten them).

Albuquerque police used unreasonable force when they deployed a barrage of less lethal weapons at "Albert,"[27] a 60-year-old man who was intoxicated and began arguing with his friend in March 2009.[28] The friend called police twice, the second time reporting that Albert had threatened him with a knife and a pellet gun. Forty-seven officers responded to the scene, including snipers and officers from specialized tactical units. After some delay, Albert complied with officers' orders to drop a knife that he was holding while standing at the doorway and walked outside unarmed. After additional delay, he stopped and began to turn. At that point, an officer was ordered to "bag him." An officer fired five successive rounds of beanbags at Albert with a shotgun. Another officer deployed a flash-bang grenade. Another officer shot him with a canister of four wooden batons, two of which penetrated his skin. Another officer deployed a police canine that bit Albert in the arm, tearing his flesh as the canine tried to pull him down.

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[26] *Id.* at 27; PERF, *2011 Electronic Control Weapon Guidelines*, 18, 20-21 (March 2011)

[27] We use pseudonyms for individuals who were the subject of force in non-fatal encounters with APD officers to protect against disclosing personally-identifying information.

[28] The tactics used by APD against Albert in 2009 resemble the response by officers in the March 16, 2014, shooting death of James Boyd. Video released to the public of the Boyd incident shows officers using a flash-bang grenade, a Taser rifle, a police canine, multiple beanbag rounds, and firearms. As noted above, the Boyd shooting is currently under investigation and is not addressed in this letter.

Albert grabbed onto a nearby fence. Two officers fired Tasers at Albert; one of them fired six five-second cycles of electricity into him. Albert finally collapsed, and officers carried him away unconscious, leaving behind a trail of blood and urine. In an April 2012 order entering judgment as a matter of law in Albert's favor, District Judge Bruce Black found that "no reasonable person could believe that an inhibited, slow-moving, 60-year-old individual, who made no physical or verbal threats, and wielded no weapons, could constitute a threat to the safety of any of the forty-seven armed and shielded police officers who stood over twenty feet away."[29]

Our investigation uncovered other incidents in which APD officers used force disproportionate to the threat or resistance encountered. An officer's Taser use on "Ben," a 75-year old man who used a cane to walk, illustrates this problem. The incident happened in September 2012 after officers responded to a bus station because Ben refused to leave. When officers arrived, they offered to take Ben to a homeless shelter and also called a Crisis Intervention Team officer to assist. Ben sat on a bench and told officers that he was not going to leave peacefully and that he was angry with the bus company for refusing to let him board. After officers tried to convince him to leave for about an hour, Ben threatened bus company employees and reached for his cane. Officers ordered him to put his cane down, but he refused. As Ben was trying to stand up using his cane (presumably for support), the CIT-trained officer shot Ben in the abdomen with his Taser. He did so even though the threat from Ben was minimal: Ben had trouble walking on his own, a sergeant and three officers were standing around him, and there were no indications that bystanders were near Ben. The sergeant on the scene found the Taser use reasonable, as did other supervisors. One supervisor praised the officers' conduct as "exceptional." A higher-level commander called for an investigation of the incident, however there is no indication that one was completed.

An incident in which three officers and a sergeant used force against "Charles" – two using physical force and two officers firing Tasers multiple times – also illustrates this problem. In June 2011, Charles, who was 22 years old and weighed approximately 165 pounds, was riding his bicycle and failed to stop at several stop signs. Officers decided to pursue Charles for the misdemeanor violation. An officer activated his emergency lights and ordered Charles to stop, but Charles continued riding away. Charles then turned into a parking lot and told the officer, "I am just riding my bike." According to officers' reports, one officer got out of his patrol car and again ordered Charles to stop. Another officer then grabbed Charles. As Charles pulled away, Charles and the officer fell to the ground, where Charles continued to move his arms to avoid being handcuffed. The sergeant then fired his Taser at Charles and discharged three cycles. Another officer also fired his Taser. He reported that he discharged three or four Taser cycles. A fourth officer arrived and grabbed Charles's arm and assisted in handcuffing him. A witness stated that Charles was argumentative and trying to get away from the officers and that one of the officers knocked him down off of his bicycle. No charges were ever filed against Charles, and none of the officers, including the sergeant, activated their belt or lapel recorders.

In April 2010, two officers went to an apartment complex after receiving a report about a domestic violence complaint. The officers questioned the property manager and learned that an unauthorized occupant, "David," was inside one of the apartments. The property manager then asked the officers to remove David from the apartment. The officers entered the apartment and

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[29] Am. Mem. Opinion in Support of Judgment as a Matter of Law, *Nelson v. City of Albuquerque,* No. 10-0553 (D.N.M. filed on June 8, 2010), at 7.

found David hiding in the kitchen. As the officers went in the kitchen, they observed David sitting on the floor behind the kitchen cabinets. One officer told David to put his hands where they could see them as the other drew his weapon and grabbed David's arm because he reportedly failed to comply with commands. While one officer was holding David's arm, the other drew his Taser and yelled at David three times before firing his Taser into David's chest and abdomen. David immediately fell against the oven door, causing it to shatter. David cut his face and head on the oven door and lay in a pool of blood before the paramedics arrived. David was taken to the hospital and was later booked for misdemeanor charges. David was unarmed and posed only a minimal threat to officers, who had drawn their weapons because David reportedly failed to comply with commands.

In other incidents, officers increased the risk of death or serious injury by deploying Tasers in dangerous situations that outweighed the threat posed by the subject. *Asten v. Boulder*, 652 F. Supp. 2d 1188, 1203-04 (D. Colo. 2009) (observing that an officer's use of a Taser near broken glass became less reasonable because it would increase the risk of injury to an unresisting, non-threatening subject).

For example, officers used Tasers multiple times on "Edward" even though he had doused gasoline on himself and his home. In December 2009, officers responded to a domestic violence call. Once the officers arrived on the scene, they heard a man and a woman screaming inside an apartment. The officers kicked down the door and immediately smelled a strong odor of gasoline. Sheets, carpet, and even Edward, were saturated in gasoline. One officer reported that he was struck in the face with an object that was later identified as a lighter that came from Edward's direction. The officers tried to speak to Edward, but he refused to follow their commands. An officer fired his Taser at Edward, striking him in the chest. Edward fell to the ground, where he struggled to avoid being handcuffed. Several officers then used their Tasers multiple times in "drive-stun mode"—meaning that they applied the Taser directly to his body instead of firing prongs from across the room—as other officers tried to handcuff Edward. After the officers finally handcuffed him, they tried to remove him from the apartment. As they were doing so, Edward began banging his head against the wall and attempted to kick at the officers. At this point, an officer used his Taser again in drive-stun mode and ignited Edward's shirt in flames. The fire had to be extinguished by another officer. The officer set Edward on fire with his Taser despite clear indications that the apartment and Edward himself were saturated with gasoline. Even if officers believed Edward posed a significant threat before he was handcuffed, once restrained, officers had other options available, such as leg restraints to prevent him from kicking. Instead, officers exposed him and others to the extreme danger of catching fire from the Taser's electrical discharge.

In another example, officers fired Tasers at "Frank," causing him to fall on broken glass; he was shocked with Tasers repeatedly until one officer's Taser ran out of power. In August 2009, two officers responded to a call after someone called 911 and hung-up. Arriving at the address from which the call was made, officers learned that 16-year-old Frank was in the bathroom and had shattered the glass shower door and cut himself. Frank was bleeding and standing on the glass in the bathroom when the officers approached him. Officers commanded him to lay face down on the floor, but he refused. He pounded on the walls with closed fists. An officer reported that Frank "lunged" at the officers. The officer then shot his Taser at Frank, and the Taser's prongs hooked into Frank's chest. Frank fell to the ground, and the officer repeatedly fired his Taser at Frank until the battery died. The officer did not report how many times he fired

his Taser, reporting only that Frank "continued to fight." While Frank was lying on broken glass, another officer shocked Frank with his Taser in drive-stun mode while his partner kneed Frank in the back several times. There were at least four officers on the scene. Finally the officers handcuffed and arrested Frank. It turns out that Frank had taken drugs and was experiencing the side effects of the narcotics. The officer who initially deployed his Taser did not use the weapon's auditing function to determine the number of five-second cycles he deployed and the supervisor's report was also missing the information. One of the officers reported that the officer who responded initially fired his Taser five times. Both of these incidents show officers' unreasonable use of their Tasers by exposing subjects to a risk of serious injury that far outweighed the danger posed by the subjects themselves.

2. Albuquerque police officers used excessive force against individuals with mental illness, against individuals with impaired faculties, and against individuals who require medical treatment.

Officers also used excessive force against individuals who suffered from mental illness or who were unable to comply with officers' commands for reasons beyond their control. The Tenth Circuit has recognized that a "detainee's mental health must be taken into account when considering the officers' use of force . . . under *Graham.*" *Cardall*, 845 F. Supp. 2d at 1190-91 (quoting *Giannetti v. City of Stillwater*, 216 Fed. Appx. 756, 764 (10th Cir. 2007) (unpublished)); *see also Estate of Mathis v. Kingston*, No. 07-2237, 2009 U.S. Dist. LEXIS 32040, at *13-14 (D. Colo. Apr. 16, 2009) (observing that when a subject's diminished capacity is immediately apparent there may be occasions when failure to follow commands may not constitute a refusal to comply). We reviewed many incidents in which we concluded that officers failed to consider an individual's physical, mental, or emotional state in making force determinations. Consequently, we found instances where individuals did not pose an immediate threat to the safety of the officer or the public, and officers deployed a level of force that was unreasonable under the circumstances.

In one example, officers fired Tasers, kicked, and beat "Greg," a 25-year-old man with a developmental disability who could not talk and was unable to follow officers' commands. In this March 2012 incident, two officers responded to a gas station after receiving information that Greg was taking off his clothes and opening packages of food in the gas station. The officers also knew that Greg had injuries to his face, and he was bleeding from his hands. When the officers arrived, they found Greg lying on the floor of the store, shoveling chips into his mouth. The officers ordered Greg to stand up and place his hands behind his back. Greg stood up, but he refused to put his hands behind his back. One of the officers gave Greg a front kick to the chest—an action the officer described as a "distraction technique"—that sent Greg to the ground. Greg rolled on the ground and moaned. The officer then fired his Taser in drive-stun mode into Greg's upper torso and neck. Greg struggled to his feet when a sergeant arrived and fired his Taser at Greg, causing him to fall back on the ground. Greg got up and walked away as an officer fired his Taser two more times at Greg's back. Greg continued moaning but moved outside. The officer then gave Greg another front kick in the upper torso, sending him once again to the ground. Greg stood up and continued walking in the parking lot. A fourth officer arrived on the scene and swept Greg's legs with a kick. The officers then attempted to forcibly hold Greg down to handcuff him as Greg made incoherent noises and bit. It was evident from Greg's bizarre behavior that he had a diminished capacity, yet officers needlessly fired Tasers,

kicked, and beat him. The officers later learned that Greg had wandered away from a group home and had the mental capacity of a five-year old. He was not charged with any crime.

In another example, an officer fired his Taser at "Harry," who could not follow the officer's commands because he was suffering from a severe drug reaction. The incident occurred in November 2011 when an officer responded to a complaint that Harry was threatening suicide and had reportedly overdosed on drugs. As the officer was interviewing Harry's mother, Harry climbed out of a window and tried to leave the house. The officer then ordered Harry to get on the ground, but he refused and replied, "I haven't done anything." The officer again ordered Harry to get on the ground. Harry reportedly took a step toward the officer, and the officer fired his Taser into Harry's stomach, which caused Harry to fall. While on the ground, Harry attempted to remove the probes as the officer continued to fire electricity into Harry's body.

An officer's decision to use his Taser on "Ivan" when he was obviously inebriated and prone on a couch is another example of this problem. In April 2010, officers responded to a disturbing-the-peace call. Officers arrived on the scene of a party and decided to break it up. One of the officers approached Ivan, who was lying on a couch, apparently passed out. The officer tried several times to awaken Ivan, including using a "sternum rub," which is a strike to the chest that causes a person to awaken and reflexively jerk their limbs. Ivan woke up, struck the officer on the leg, and lay back down. The officer then attempted to handcuff Ivan, despite the fact that Ivan was clearly intoxicated and unable to respond to the officer's commands. As Ivan pulled away from the officer while still prone on the coach, the officer fired his Taser at Ivan and then used it in drive-stun mode three times before he finally arrested the man.

The officers' use of Tasers and other force in these incidents was not reasonable. None of the subjects posed a significant threat to the officers' safety or that of anyone else. *Graham*, 490 U.S. at 396. Any offense they may have committed was minor. Most importantly, the mental state of the individuals indicated an inability to comply with officers' commands, which did not justify using multiple Taser discharges or severe physical force, like kicking or beating. *Cardall*, 845 F. Supp. 2d at 1192 (observing that courts have stressed that an officer should hesitate to deploy a Taser when the subject is incoherent and he does not appear to understand the officers' commands) (internal citations omitted).

Officers further used force, including Tasers, against individuals in medical crisis or who were otherwise physically vulnerable. In the incidents we reviewed, officers used Tasers, physical blows, and other physical force when individuals with diminished capacity failed to comply with their commands. It is important to note here that when officers use force after they have been called merely to check on a vulnerable person's welfare and not to investigate a crime, the reason for the call is a relevant consideration in determining whether the force used was reasonable. *Mathis*, 2009 U.S. Dist. LEXIS 32040, at *12-14. We found that officers used unreasonable force against individuals in medical crisis in a number of cases.

In one such example, officers fired Tasers, grabbed, and choked "Jeremy" after they were called to his house to check on his welfare in September 2012. When the officers arrived, Jeremy was locked in the bathroom. His mother told the officers that her son was unarmed and suffered from schizophrenia. The officers asked Jeremy to open the bathroom door, but he refused. The officers then kicked down the door, grabbed Jeremy, and tried to forcefully take

him out of the bathroom. Jeremy pulled away from the officers and tried to run into another room. One of the officers tripped him, and Jeremy fell to the floor. Jeremy then jumped back up to his feet and tried to run back into the bathroom. One of the officers shot her Taser at Jeremy, but missed. The officers then returned to the bathroom and grabbed Jeremy by the head and kneed him several times in the leg. One of the officers then began choking Jeremy until he stopped struggling, and he was arrested. Again, Jeremy had committed no crimes when officers arrived. They were called to check on the welfare of a man with mental illness and instead they used severe physical force against him.

In another example, officers beat and fired Tasers at "Ken" who was suffering from a bad drug reaction and posed no threat to the officers. In May 2010, officers responded to a disturbance call. Ken reportedly was having an adverse reaction to his medications and drugs. Once the officers entered his home, Ken was unarmed and naked. He also seemed disoriented, and he said, "Bang bang!" to the officers as they approached him. Ken then picked up a mop and said, "Boom boom!" as he approached the officers. As Ken was turning away from the officers, one of them fired a Taser at Ken's back. Ken fell to the ground, and officers beat him in an effort to restrain him. Another officer fired his Taser into Ken's body in drive-stun mode, and Ken was then restrained and taken to the hospital.

Neither Jeremy nor Ken posed a significant threat to the officers. Moreover, officers were called to assist the men, who were in obvious distress. The unreasonableness of the force is exacerbated by the officers' neglect of Jeremy's and Ken's conditions, as well as the fact that no crime was involved. *Graham*, 490 U.S. at 396; *Sevier*, 60 F.3d at 701 (observing that officers may precipitate the use of deadly force through their own reckless conduct by confronting a disturbed or suicidal subject with weapons drawn and without gathering more information).

An incident in which an officer fired a Taser at "Larry" repeatedly after he had a car accident, was convulsing in the car, and was non-compliant, provides another example of officers using disproportionate force. In June 2010, officers responded to the scene where Larry had crashed his car. Larry was convulsing inside the car when the officers approached. An officer commanded Larry to open his door, and Larry indicated he would not get out of the car. Larry was in the vehicle with his young child, and, fearing for the child's safety, the officers decided to shatter the passenger-side widow of the vehicle to get the child out of the car. Once they opened the car door, officers again commanded Larry to get out. After he refused, an officer fired his Taser into Larry's back and buttocks. The officer cycled his Taser one time, and then Larry attempted to crawl out of the vehicle. Larry then turned around and got back in the vehicle, and the officer fired his Taser again. Once Larry was finally out of the vehicle, the officer fired his Taser yet again before placing Larry on the ground. Larry drifted in and out of consciousness before an ambulance was able to get to the scene.

The incidents discussed in this letter are not exhaustive. They illustrate the types of encounters that have resulted in a use of force that was not objectively reasonable. We recognize that most encounters with police are resolved without the need to use force and that many APD officers carry out their duties in accordance with the Constitution. However, in a significant number of force cases, force used by APD officers was excessive and placed the community at risk of future harm.

C. Systemic Deficiencies Cause or Contribute to the Use of Excessive Force.

A number of systemic deficiencies contribute to the department's pattern or practice of use of excessive force. The most prevalent deficiency is the department's endorsement of problematic police behavior by failing to conduct thorough and objective reviews of officers' use of force. Despite the use of technology and efforts to implement innovative intervention programs, problematic behavior continues to be viewed as reasonable, even exemplary, by supervisors. These deficiencies demonstrate a failure to embrace policing fundamentals, namely, recognizing and enabling officers' duty to protect both the public's safety and civil rights.

Officers have an obligation to value the life and safety of the individuals they encounter as part of their core mission. As written, APD's policy on use of force is consistent with this principle: "It is the policy of this Department that officers shall use only that force which is reasonably necessary to protect the sanctity of human life, preserve and protect individual liberties, and to effect lawful objectives." APD Procedural Order 2-52. Police leaders must instill these values through accountability measures, training, policy, and the culture they inspire or tolerate.

However, based on our review, APD has failed to abide by these fundamental policing values. We find this failure evident in the following systemic deficiencies: (1) a broken system of internal accountability; (2) inadequate training on use of force, community policing, and constitutional policing; (3) policy deficiencies; (4) an aggressive culture that undervalues civilian safety and discounts the importance of crisis intervention; and (5) insufficient leadership on tactical operations, community policing, and the importance of accountability to external oversight.

The contributing factors we discuss below evidence a breakdown in leadership that is responsible for ensuring that the agency functions in accordance with its mission and core values. The department has invested significant resources to obtain thoughtful recommendations from independent reviews and has participated in discussions on policing issues of national importance over the years, yet it has failed to take basic steps to clarify policies, set expectations through consistent discipline, or ensure the effectiveness and integrity of its training programs. Over the years, the department has reacted hastily in crafting certain measures, such as lapel cameras, which were deployed without making sufficient efforts to ensure the support of the rank-and-file, were not implemented with the necessary supervision and oversight to ensure proper implementation, and appeared directed only at placating public criticism. As a result, there has been an inconsistent approach to reform, and critical systems intended to ensure constitutional policing remain deficient.

1. The Department's Inadequate Internal Accountability Measures Contribute to the Pattern or Practice of Excessive Force.

We identified several deficiencies in APD's internal accountability mechanisms that contribute to the use of excessive force: ineffective supervisory reviews, inadequate documentation of force, inadequate force investigations, and incomplete implementation of APD's internal review mechanisms, including internal affairs, the early intervention process, and the critical incident review process. We did not assess hiring practices; however, we did receive information that causes us concern with regard to those practices. We look forward to working

with the City to strengthen background checks and suitability assessments of new and lateral hires.

a. Supervisory reviews do not address excessive uses of force.

We found numerous instances where improper force was used, but the problems were neither identified nor addressed by the chain of command. In nearly all of the incidents that we found problematic, we did not observe *any* findings by *any* supervisor—from the sergeant, who is a patrol officer's immediate supervisor, up through the entire chain of command—that the officer's use of force required corrective action. Data produced by APD corroborates our finding. APD reported 1,863 uses of force from 2010 to 2013. Of these, supervisors found that only 14 uses of force, or less than one per cent, did not comply with agency policy. Supervisors requested a further investigation of 39 uses of force, or two per cent. The overwhelming majority of uses of force during this four-year period were endorsed by supervisors as reasonable. Significantly, in 2010 and 2011, prior to the opening of our investigation, APD supervisors found only two uses of force that failed to comply with policy. As set forth below, however, our investigation revealed numerous instances of policy violations.

APD policy does not require that supervisors conduct a thorough, rigorous and objective review of officers' use of force, including ensuring that officers provide a complete and accurate account of the facts surrounding their use of force. Instead, supervisors are required to review and sign a two-page form (titled "Use of Force Report Form") that is designed to capture descriptive data about an incident rather than providing for a qualitative review of an officer's use of force. The Use of Force Report Form provides a space for a supervisor to fill in, without more, whether the force was "reasonable" or whether "investigation [is] required." The policy does not provide any guidance on the circumstances that would warrant further investigation; nor does it require that supervisors identify potential policy violations, corrective action, or other training or policy concerns. A separate "Evaluation Form" requires more narrative information and is completed by the commander and the deputy chief after a review of the initial report. However, a commander's responsibility for reviewing force is limited in APD policy to a generalized statement – without additional guidance -- requiring that the commander ensure that subordinates conform to the use of force policy.[30] *See* APD Procedural Order 2-52-6(D)-(E).

Not surprisingly, the force reports that we reviewed—and we reviewed hundreds of them—were almost entirely devoid of any analysis of whether force was reasonable. Supervisors marked as "reasonable" almost every use of force report form we saw. Some reports were unmarked altogether. Additionally, we saw few instances where the Evaluation Form was completed or even included, suggesting that these incidents were not subject to review up the chain of command. The PERF report noted similar problems based on PERF's review of use of

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[30] As background, the force reports APD produced include the Use of Force Report Form, a Use of Force Evaluation Form ("Evaluation Form"), Incident/Offense Reports, Supplemental Incident Reports, witness statements, and supplemental memoranda. The Evaluation Form requires more narrative information and is completed by the commander and the deputy chief after a review of the initial report.

force data and reports from 2007 through the first quarter of 2011. For example, PERF found that the officer provided no reason for the force incident in 42% of the incidents reviewed.[31]

These superficial reviews evince the chain of command's disregard for detecting individual and aggregate patterns of unreasonable force by subordinates. They also demonstrate the department's failure to identify and address officers who need correction and inadequate responses to serious policy infractions. Indeed, we reviewed a number of instances that *required* corrective action under the department's policies, but none was taken. For example, in the shooting involving Alan Gomez, the officer shot Gomez without verification of a threat and after receiving information that Gomez could not have been a threat because he was no longer armed. This clearly violated the department's policy, which permits deadly force only where there is an "immediate threat of death or serious physical injury,"[32] but this policy violation was not addressed in the shooting review. Similarly, in the force involving "Edward," it was evident that the officer's decision to fire his Taser at Edward violated the department's policy, which prohibits officers from using the weapon in "any environment where an officer knows that potentially flammable, volatile, or explosive material is present (including . . . gasoline . . .)."[33] Edward was also handcuffed at the time he was shocked with the Taser. The department's policy prohibits use of the Taser "on a handcuffed prisoner unless they continue to use physical force or violence against the officer, another person or themselves which cannot be controlled by other means."[34] Despite evidence of both policy violations, the supervisor marked this incident as "reasonable" and conducted no additional investigation.

We identified other policy violations that went uninvestigated and uncorrected. For instance, the policy allowing officers to use deadly force to disable a vehicle's tires was violated when officers shot directly at, and killed, Daniel Tillison and Mickey Owings.[35] Other policy infractions that went uncorrected included the policy that fleeing should not be the sole justification for firing a Taser at an individual, the requirement that reports should be completed by all officers witnessing the use of force, and the prohibition of using a Taser against an individual who is passively resisting.[36] We found improper and uncorrected uses of force in violation of all of these policies. Supervisors failed to address these policy violations, either by taking corrective action or referring the incident for further investigation by Internal Affairs, allowing improper conduct to continue unchecked.

b. Force incidents are not properly documented.

Deficient documentation by officers using force and inadequate review of this deficiency up the chain of command contributes to the pattern or practice of excessive force. This documentation deficiency includes failing to document incidents with recording devices, such as lapel cameras and belt tapes,[37] as well as failing to complete use of force reports, failing to

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31 PERF Report, *supra* note 11, at 52.

32 Use of Force Policy, 2-52-3(B)(1).

33 Use of Force Policy, 2-52-8(G)(3)(a)(5).

34 Use of Force Policy, 2-52-8(G)(3)(a)(2).

35 Use of Force Policy, 2-52-3(B)(3).

36 Use of Force Policy, 2-52-8(G)(3)(a)(4); 2-52-6(B); and 2-52-8(G)(3)(b), respectively.

37 Before using lapel cameras in 2012, APD officers used belt tapes to capture audio of incidents.

accurately describe the force used in incident reports, and failing to report the use of force altogether. The department's internal review mechanisms failed to correct these deficiencies.

For example, the department's use of force policy provides, "Upon firing the [Taser], the officer shall energize the subject the least number of times and no longer than necessary to accomplish the legitimate operational objective."[38] However, officers routinely failed to specify the number of five-second cycles they deployed at an individual, despite the significant risk of serious harm posed by prolonged or repeated Taser deployment. Professional law enforcement and research organizations have warned against continuous deployment of Tasers for more than three cycles, or 15 seconds, and the need for specific justification and investigation in such circumstances.[39]

We also reviewed numerous reports where officers and supervisors on the scene failed to turn on their lapel cameras or belt tapes. Officers failed to record some incidents even when it was the officers themselves who initiated the contact, making their failure to switch on their cameras or recorders before beginning the encounter especially troubling. For example, in an incident where officers fired Tasers at "Mike" after stopping him for speeding, none of the officers present recorded the incident. Many of the reports include repetitive or standardized explanations for failing to record, such as "the immediacy of the situation" and "rapid and unexpected event." These descriptions were provided where it was clear that the officer had a clear opportunity to record the event. We found very few examples of officers being reprimanded for failing to record force incidents. The fact that few officers were reprimanded for this failure suggests that supervisors have also failed to insist on this form of accountability. The reports reflect some of the justifications we heard onsite for not recording force incidents. We were informed, during our onsite visits and after, that some officers found the equipment cumbersome and difficult to operate. However, we observed a number of officers successfully using the lapel cameras during our onsite tours. In the time since our onsite tours, the department has procured new lapel cameras that are reportedly easier to operate. We have not assessed officers' use of that new equipment. However, the department's failure to record incidents consistently indicates that officers have not embraced these accountability mechanisms.

We also reviewed numerous reports that did not provide sufficient information to justify the force used, did not explain fully what type of force was used, and did not accurately describe the level of threat, if any, posed by those against whom force was used.[40] Many of the reports included canned language, such as "aggressive posture" and "aggressive manner," but the overall

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38 Use of Force Policy, 2-52-8(G)(6)(b).

39 NIJ Special Report, *supra* note 23, at 4 ("A preliminary review of deaths following [Taser] exposure found that many are associated with continuous or repeated shocks. There may be circumstances in which repeated or continuous exposure is required, but law enforcement officers should be aware that the associated risks are unknown. Therefore, caution is urged in using multiple activations."); PERF Guidelines, *supra* note 24, at 19, 21-22; International Association of Chiefs of Police ("IACP") Model Policy, Electronic Control Weapons, April 2010, and IACP National Law Enforcement Policy Center, Electronic Control Weapons, Concepts and Issues Paper, April 2010.

40 This issue was also noted by PERF. PERF Report, *supra* note 11, at 48 ("[L]imitations to the data make it impossible to distinguish between events where a weapon was not needed and events where a weapon was used but the weapon use was not reported.").

description of the incident did not support such characterizations. For example, obviously disoriented subjects were described as approaching officers in an aggressive manner. In many instances where multiple officers witnessed an incident, officers did not complete supplemental reports as required by APD policy.[41] Other common documentation deficiencies included:

- Failing to take a statement from the person who was subjected to force;
- Failing to provide photographic documentation of the injuries sustained; and
- Failing to investigate discrepancies in the report.

Despite these deficiencies, supervisors noted no problems with the reports, marking questionable force incidents as reasonable. The reports also reveal that officers often failed to canvass for witnesses to the use of force, which led to reports that were usually one-sided.

Finally, the verified information we received from community witnesses indicates that officers underreport force incidents. We note first that the policy effective during our review period required officers to complete reports only where the officer's actions resulted in an injury.[42] This standard is too narrow and allows officers not to report force, even significant force, if they do not believe an individual was injured. For example, we reviewed video of officers putting one man in a chokehold, but there was no force report completed regarding this encounter despite the risk of serious harm. *See Walton v. Gomez*, No. 12-1496, 2014 U.S. App. LEXIS 4493, at *49 (10th Cir. Mar. 14, 2014) (noting that police training materials recommend against applying chokeholds for longer than one minute because brain damage or death could occur and observing that courts from various jurisdictions have held chokeholds on a non-resisting subject to be excessive). In situations where officers do not use weapons, supervisors are only expected to review force from "hand-to-hand action resulting in injury,"[43] which excludes other significant physical force, such as kicks, leg sweeps, prone restraints, and other forceful takedowns. Not surprisingly, we heard from credible witnesses who suffered injuries as a result of their encounters with officers, yet no force reports were completed. The failure to provide clear policy guidance on reportable and reviewable force results in underreporting of force and contributes to the use of unreasonable force.

c. Shooting investigations are inadequate.

Officer-involved shooting investigations are conducted by the department's homicide detectives with the aid of a multijurisdictional team.[44] While these investigations are more thorough than reviews of less lethal force incidents, we noticed several deficiencies in the investigations. First, as a matter of policy, the department does not subject incidents where officers shoot to disable a vehicle to the same scrutiny as shootings of persons, despite the significant risks of death or serious injury to the occupants of the disabled vehicle or to

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41 Use of Force Policy, 2-52-6(B).

42 Use of Force Policy, 2-52-6(A), (B).

43 Use of Force Policy, 2-52-6(D)(2).

44 The team includes homicide detectives, an internal affairs investigator, and representatives from the Sheriff's Office, the Independent Review Office, the District Attorney's Office, and the State Police. A homicide detective leads the team.

bystanders.[45] Although shooting at a vehicle's tires, as permitted by APD policy, may not pose the same certainty of death or serious injury as shooting at the driver himself, the risk is at least equal to, if not greater than, ramming a moving vehicle to disable it. *See Scott*, 550 U.S. at 384 (observing that the term "deadly force" encompasses a range of applications of force, some more certain to cause death than others and noting that ramming a vehicle poses a "high likelihood" of death or serious injury to the driver); *see also Cordova*, 569 F.3d at 1188-89 (distinguishing the ramming technique in *Harris* to the near certainty of death or serious injury resulting from shooting a driver in the back of the head). Given the significant risks involved when officers discharge their firearms at moving vehicles, APD should respond to such incidents with the same level of resources and heightened scrutiny as other firearm discharges.[46]

We also observed deficiencies in how detectives approached shooting incidents that were questionable, i.e., not clearly justified. Based on our review, detectives approached these incidents with less scrutiny than required, such as by failing to canvass for witnesses, to test the officer's account, and to address contradictions. For example, in the shooting of Dominic Smith, the review team failed to reconcile inconsistencies in the physical evidence when compared with the officer's statement. The officer claimed that Smith came towards him and reached in his waistband. However, the physical evidence indicated that Smith had a defensive wound and was shot through the forearm. This discrepancy was not addressed in the shooting review. In the shooting review of Daniel Tillison, detectives failed to canvass the area for witnesses even though the shooting occurred in a parking lot within sight of a number of residences. In addition, in some reviews, the shooting officer's interview was attended by other officers who were involved in the incident. This practice encourages collusion and discourages candor. Finally, the reviews seemed biased in favor of clearing the officer as opposed to gaining a full understanding of the incident. These deficiencies contribute to the pattern or practice of unnecessary uses of deadly force.

d. Internal review mechanisms are not implemented.

We observed additional deficiencies in the department's internal review mechanisms, including internal affairs reviews, the early intervention system, and the critical incident review board. First, under the department's use of force policy, the internal affairs unit is responsible for reviewing all reported uses of force to determine whether: (a) departmental policies, rules or procedures were violated; (b) the relevant policy was clearly understandable and effective to cover the situation; and (c) department training was adequate.[47] However, we found no evidence that the internal affairs unit consistently carried out this critical task. Nor does the internal affairs policy specify how the unit should conduct these substantive force reviews. The internal affairs policy states explicitly that the unit is responsible for conducting administrative investigations of cases where an individual is killed or seriously injured, or an officer discharges his firearm.[48] However, it is silent on how other uses of force should be reviewed. The policy

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[45] Investigation of Shootings and the Use of Deadly Force Involving Department Personnel, 2-31.

[46] Of course, it would be preferable to prohibit officers from shooting at moving vehicles altogether, as recommended by PERF and consistent with the practice of many other police departments.

[47] Use of Force Policy, 2-52-7(B)(1).

[48] Internal Affairs Policy, 3-41-3(A)(6), (7).

also fails to list force reviews or investigations as part of the internal affairs unit's major purposes.

Thus, in many cases, we found that the internal affairs unit did not make recommendations to the chain of command where officers clearly violated policy, despite its responsibility to "identify personnel guilty of misconduct so that proper corrective action may be taken."[49] We also found that the internal affairs unit relies too heavily on interviews conducted in the initial shooting review. We reviewed a number of files where internal affairs failed to re-interview civilian witnesses. The unit is thus deficient in carrying out one of its most basic duties.

Second, the department's implementation of the early intervention system is ineffective. An early intervention system should be non-punitive, proactive, and geared toward identifying officers who may require re-training and counseling. These officers may have had a number of force incidents, community complaints, policy violations, or other issues that indicate that they may need some level of supervisory intervention to prevent them from engaging in future improper conduct. Administrative Order 03-49 outlines APD's early intervention system. However, based on our interviews, the purpose of the early intervention process appears to be a mystery to line officers. During our onsite meetings, many officers expressed concern that the process was used to punish them instead of correcting or disrupting potentially problematic conduct. Their understanding of the system is disconnected from the policy itself and what we heard from commanders. This lack of clarity suggests a lack of buy-in by officers to the process. Part of the confusion may be due to the initial policy statement, which states that the early intervention system is an essential part of the department's overall discipline system, rather than a management tool that is non-disciplinary.[50] To be fully effective, early intervention must be accepted by officers, supervisory personnel, and the community as an important alternative and complement to the agency's discipline system.

Also, we are concerned with the early intervention policy's high threshold for reassigning officers who have been required to attend multiple early intervention meetings in a 12-month period. The threshold of five meetings—which means the officer engaged in more than 15 uses of force, or a combination of 25 other triggering events, including firearm discharges and missing court—is too high. The seven data elements or performance indicators captured by APD's early intervention system may also be too limited for APD's size and risk management needs. APD should consider adding elements related to vehicle pursuits, incidents involving resisting arrest, injuries, sick days and other absences.

The department is also not using the early intervention process in the way it was intended, which is to disrupt patterns of problematic behavior. We reviewed a sampling of the early intervention files and found lacking documentation, superficial reviews, and a failure of the supervisors to discuss underlying incidents with officers. For example, reports with officers flagged because of multiple force incidents did not include the underlying force reports, and many made no mention of supervisors having discussed the incidents with the officer. Many of the reports were so cursory that it was difficult to discern what was discussed with the officer in the meeting. We question the effectiveness of such meetings.

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49 Internal Affairs Policy, 3-41-2(A)(2).

50 Early Intervention System Policy, 3-49.

Finally, the department's critical incident review board is ineffectively implemented. As with the early intervention system, the critical incident review board is a necessary and good idea. The board was established to identify deficiencies or required changes in policies and training through a review of serious incidents. The board consists of a diverse group, including commanders, a training representative, and a patrol supervisor. Despite the laudable purpose of the board, we are concerned with its effectiveness. Specifically, there is no communication to others within the agency about its findings, no documentation of the board's meetings, and no corrective actions stemming from the board's meetings. In sum, the process appears to be superficial. Such anemic internal review mechanisms contribute to the pattern or practice of unreasonable force.

2. The Department's Training Deficiencies Contribute to the Pattern or Practice of Unreasonable Use of Force.

In our review of the department's training programs, it was clear that the department has recently taken a number of steps to improve the training it provides to officers, most prominently by hiring a new training director. As we expressed to then-Chief Schultz during our meetings with him, we believe that the director is taking the training program in the right direction, and we commend the department for all of the support it has shown for the new director's efforts. Nonetheless, we found numerous deficiencies in the department's training program that have contributed to the pattern of unreasonable uses of force. While many of these deficiencies seem to be under review by the director, we will address them here because doing so provides a more complete picture of the department's approach to the use of force. Our observations about the training programs are based on on-site reviews of training materials and interviews with training staff; reviews of training curricula, lesson plans, and classroom materials; and consultation with our police practices consultants.

The most significant deficiency we observed in the department's training programs—both at the academy, where new recruits are trained, and in the ongoing training that officers receive regularly—is the over-emphasis on using force, especially weapons, to resolve stressful encounters, and insufficient emphasis on de-escalation techniques. Much of the training leads officers to believe that violent outcomes are normal and desirable. Even scenario-based trainings, where officers role-play in simulated interactions with civilians, tended to escalate to the use of force, even though scenario-based training can be very effectively used to teach officers how to diffuse tensions and end stressful civilian encounters peacefully. As in many police departments, Albuquerque officers are trained on a computer-assisted Firearms Training Simulator, and we note particularly that this simulator could be used more effectively to teach verbal de-escalation strategies.

Also concerning is that it is impossible to ensure that the training that officers receive accurately reflects the department's policies, the state of the law, and best practices in policing. Most of the individuals who deliver lectures during police academy sessions do not provide the department with lesson plans or classroom materials, which prevents the department from validating those materials to ensure that they are consistent with the department's policies and values. It is also impossible to tell whether the content of the training is the same from one academy session to the next, and thus whether officers come into the field with the same base of knowledge.

We understand that much of the department's training program is mandated by New Mexico's Peace Officer Standards and Training Program, and the department does not have complete flexibility in determining what training officers receive. However, the department can and does supplement the training required by the state, and has the ability to tailor the training program to its needs. We also know that APD's training director shares all of these concerns, and we commend the steps he is taking to remedy the problems, such as by hiring a curriculum writer who can create training programs that are fully documented and validated by the department. The department should also require any individuals who train its officers to provide their complete lesson plans, classroom materials, and any other information the department may require to ensure that the training provided meets the department's standards.

As mentioned above, the department offers training to new recruits at its police academy and to officers already working in the department through regular in-service, or annual training updates called "maintenance of effort," training. It appeared to us that the maintenance-of-effort training was largely a lost opportunity. Officers we spoke to perceived it as a waste of their time, and much of it seemed to focus on the use of weaponry. We believe that the maintenance-of-effort trainings are another area where the department also can focus on subjects that are not included in the training required by the state and can take a more active role in designing its own original curriculum.

We found a number of areas in which training seemed to be entirely lacking or at least dangerously deficient. It appeared that officers are not given refresher trainings on critical policies, such as the use-of-force policy, when those policies have been implicated in major incidents. Similarly, major incidents themselves do not give rise to new training scenarios, though many officers expressed a desire to see the department as a whole learn from such incidents.

In addition, when new or different policies are put into effect, or when officers are provided with new equipment, the department fails to provide new training to prepare officers for the changes, which predictably leads to policy violations and the misuse of equipment. For example, when the department issued lapel cameras and then added a new policy that required officers to record civilian encounters, our understanding is that officers were not provided sufficient training on the lapel camera policy or on how to use the lapel cameras, especially in situations in which the use of force is likely. As noted elsewhere in this letter, officers have consistently failed to follow the department's lapel camera policy and have failed to record critical encounters. The lack of training on the lapel cameras is partially to blame.

We also found that the department should provide substantially more training on constitutional law. It appears that officers receive only a few hours of training on constitutional standards at the police academy, and very little (if any) time is put into these topics during maintenance-of-effort trainings. We also note with concern that the legal training materials provided to officers contain a number of cartoons that are likely intended to break up the monotony of the material, but that nevertheless are unprofessional and, in some cases, offensive. These cartoons send the wrong message to officers about the importance of civilians' legal rights.

Officers should also receive more training on community policing—which is widely embraced by the field as effective at building community trust in police departments and in

ensuring public safety. As noted below, officers at all levels of the chain of command seemed to have a poor understanding of what community policing is or how it can improve their encounters with civilians and better protect the public. Any efforts the department takes to adopt a true community policing model should include robust training on what community policing is and how it should impact officers' work.

Because so much of the department's training program is not documented, it was difficult for us—as it is for the department itself—to fully evaluate most of the training that officers receive. From our review of other aspects of the department, however, it is apparent that training is deficient in several other areas. The department clearly has not provided sufficient training on the use of Tasers, including when their deployment may pose substantial risks to the safety of officers and the individuals on whom they are being used. We also believe that the way officers have communicated with (or failed to communicate with) individuals in mental health crisis show a clear lack of appropriate training on mental illness. In addition, the department should fully re-assess the training it provides to officers on how to write police reports, as well as its training for supervisors on how to review the police reports filed by their subordinates. Several of the first- and second-line supervisors we spoke to (those at the ranks of sergeant and lieutenant) also expressed an interest in seeing the department offer training specifically for new supervisors.

3. The Department's Deficient Policies Contribute to the Pattern or Practice of Unreasonable Use of Force.

The department's use-of-force policies and procedures fail to provide its officers with the operational guidance they need to ensure constitutional policing. These policy deficiencies begin with the failure to clearly define "force" in terms that allow officers to distinguish between reportable uses of force and non-reportable uses of force. The department's definition of "force" should be articulated clearly to allow for consistent, practical applications. In addition, the current definition of "police action" is too vague. For instance, it is unclear if the definition includes escorting an individual, pointing a firearm, or placing an individual in a prone restraint. The absence of clear guidance on what force officers are required to report leaves significant gaps. These gaps affect the quantity and quality of force reports that should be generated after force is used in incidents that do not result in fatalities.

APD's use of force policy is also too restrictive in requiring officers to report only force that results in injury. The policy states that "in all instances where police actions are used which result in an injury, officers shall document the injury or alleged injury in the report of the incident." The term "injury" is not sufficiently defined in the policy. Not surprisingly, we found that officers have varied interpretations of the policy, and many seemed uncertain when a use of force should be reported. We interviewed one sergeant who told us that no report was required where an officer used pepper spray. He also stated that even officers' use of physical force did not require documentation where there was no obvious injury. The varying interpretations of the current policy further limit the quantity of reports generated after incidents. The broadly drafted and unclear policy is ineffective, encourages abuse, and allows officers to conceal uses of force that should ordinarily be reported and reviewed.

The department's policy regarding shooting at moving vehicles is outdated and inconsistent with best police practices. As noted above, shooting at vehicles is generally a poor

tactical choice and exacerbates the chances of vehicles becoming more dangerous instruments. The department's policy does not prohibit firing at moving vehicles. It specifically permits officers to fire at tires in certain situations. Under policy 2-52-3(B), officers are permitted to disable the tires of a moving vehicle by shotgun or rifle in circumstances where the officers are protecting themselves or others from what is reasonably believed to be an immediate threat of death or serious physical injury or preventing the escape of one reasonably believed to have committed a felony. This policy is inconsistent with modern and acceptable police practices; moreover, we found little evidence that officers have been following this policy.

Indeed, our review of incident reports revealed a practice of officers firing and injuring subjects in the cabin of their vehicle. In the fatal shooting of Mickey Owings, an officer shot him through the passenger window as he attempted to leave a busy department store parking lot. Owings' vehicle eventually slowed down as he lost consciousness and then died. The officer's action clearly violated the department's policy and placed citizens in the parking lot area in danger. Although the department concluded that the officer's conduct was justified, it appears that the only immediate threat that Owings posed was property damage, and the officer could have employed other tactics to avoid having to use deadly force under these circumstances. Furthermore, it appears that the officer did not try to place himself in a tactically advantageous position, but instead reacted in a manner that was inconsistent with the department's own policies.

The department has been aware of the problems with this policy and the risks associated with allowing officers to fire at vehicles since at least June 2011, when PERF recommended that the department prohibit officers from firing from or at moving vehicles under all circumstances.[51] Despite PERF's guidance, APD has not revised its policy to address the likely dangers associated with allowing its officers to fire at moving vehicles. This delay in implementing needed reform signals that APD does not acknowledge the dangers associated with firing at moving vehicles. The department's failure to update its policy to conform to modern police practices places its officers and citizens at a higher risk of harm.

The use of force policy also includes terms that imply the justified use of force. For example, officers are required to describe the force they use in an "offense" report, which suggests that the subject of force was committing or suspected of committing a crime.[52] Based on our review, some individuals are the subject of force during welfare checks or when they are not engaged in criminal activity. Subjects of force are also referred to as "combatants" in APD policy.[53]

As discussed earlier, the use of force policy is wholly inadequate in requiring thorough and objective supervisory reviews of force. The policy does not describe the collection and preservation of evidence regarding an officer's use of force, canvassing the scene for witnesses, obtaining information from subjects of force, reviewing photographs and other demonstrative evidence, or referring a use of force for administrative or criminal investigation. The policy also does not prohibit having those supervisors who used, authorized, or directed force subsequently review the reasonableness of the force. We reviewed incidents in which supervisors who were

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51 PERF Report, *supra* note 11, at 22-23.

52 Use of Force Policy, 2-52-6(B)(1).

53 Use of Force Policy, 2-52-6(B)(1)(d).

on the scene and participated in the use of force also determined that the force they used or authorized was reasonable and did not warrant further investigation. Other policy deficiencies include permitting canines to be deployed for crowd control, which is inconsistent with contemporary policing practices.

Underreporting appears to be correlated with poor interpretations of the force policy and officers' resistance to reporting incidents. Underreporting inhibits the department from learning from use-of-force incidents. It also limits the quantity of incidents that supervisors could review, and it leads to officers not being held accountable for their actions. The high number of force incidents involving Tasers in our review sample suggests either that Tasers are used with considerable frequency or, more likely, that other forms of force are being underreported. APD's policy of requiring use of force reports when there is an injury allows officers to avoid reporting incidents where there is no visible or apparent injury. We also obtained recordings of force provided by individuals without corresponding APD reports. It appears that the department has failed to account for the full range of force that its officers use against its citizens. This failure has a contributed to the pattern or practice of excessive force.

4. Under-Use of the Crisis Intervention Team Contributes to the Pattern or Practice of Unconstitutional Force.

As noted above, the Crisis Intervention Team ("the Team") is a specialized unit in APD that is trained and equipped to create safer encounters with individuals who are in mental health crisis and may harm themselves or others. After interviewing and observing the Team and some of the patrol officers they have trained and certified, we are encouraged by the innovations and passions that many on the Team have brought to the department. In many ways, the Team provides a template for the department as it considers how to remedy its pattern of unreasonable uses of force. Members of the Team demonstrate an understanding of the illnesses that individuals suffer, they are informed about the challenges those individuals face, and they approach encounters with an eye toward preserving the health and safety of everyone involved.

Given the Team's skills, the department could gain substantially—and could greatly impact its overemphasis on the use of force—by involving the Team in far more of its encounters than it currently does and by permitting the Team greater latitude in the course of an encounter to broker a peaceful outcome. Reaching this goal may require adding personnel to the Team and training and certification of additional patrol officers across the city. Our understanding is that currently, if officers encounter someone in mental health crisis, they can call for a Team member or a specially trained patrol officer assigned to their part of the city, but there is no guarantee that either will be available. We recommend that the department conduct a staffing study to determine how many officers would need to be added to the Team, as well as how many patrol officers would need to be trained and certified, to ensure that someone with the appropriate skills is always available in all parts of the city when an encounter with someone in mental health crisis occurs.

The department could also make a significant impact on officers' tendency to use force during stressful encounters by providing officers more training on the use of de-escalation techniques. The Team currently provides this kind of training to new recruits at the police academy, but our observations of, and interviews with, officers indicate that the Team's training has so far failed to make an impact on the overall culture of the department and the general

approach of most officers. We also found it troubling that many officers did not seem conversant with the Team's function or its relevance to their encounters with those in mental health crisis. A clear example of this lack of familiarity was evident in the use-of-force reports that we reviewed. In far too many of those reports, officers encountered a person who was clearly in mental health crisis, but they made no attempt to contact the Team or patrol officers in their area who had been trained and certified by the Team. Partially as a result of the officers' failure to use the resources available to them, far too many of these encounters had a violent outcome.

One area where we believe the department can immediately begin leveraging the skills and training of the Team is in what officers call "welfare checks"—where someone has called 911 to ask officers to check on a person who may be at risk of harming himself or who seems to be in crisis. In the use-of-force reports we reviewed, far too many encounters that began as welfare checks ended in violence, and far too often the officers' use of force was unreasonable. The inclusion of the Team or patrol officers trained and certified by the Team on welfare checks could make a substantial impact on the department's use of force and could lead to better overall outcomes for residents in mental health crisis.

5. The Department's Ineffective Use of Its Tactical Deployments Contributes to the Use of Excessive Force.

Through our review of use-of-force reports, officer-involved shooting investigations, and interviews with citizens, we conclude that the department inadequately conducts tactical deployments. Tactical deployments are a significant component of a police department's strategic response to high-intensity incidents. These incidents include encounters with suicidal subjects, barricaded subjects, hostage situations, and high-risk traffic stops.

In our review of the Department's SWAT, we found deficiencies in the leadership of this specialized unit. At the time of our review, the SWAT commander had not received adequate training and appeared to lack the experience to direct a disciplined and effective SWAT unit. It is critical that supervisors be taught the skills necessary to oversee a specialized unit. Beyond the commander's lack of SWAT experience, we note that the unit does not have clear command structure or deployment guidance. As a consequence, we found that SWAT members do not have sufficient understanding of incident deployment, scene control, or proper reporting protocols. We further noted a near absence of organizational accountability. Officers are simply afforded too much autonomy, which has contributed to even greater insularity from the department's accountability systems, ineffective deployments and tragic shootings that could have been avoided.

SWAT's deficient on-scene supervisory oversight contributes to the pattern of unreasonable use of force. Based on our review, SWAT officers failed to conduct any pre-deployment planning and rarely coordinated with patrol officers once they arrived on the scene of incidents. We further found that SWAT officers were unable to provide operational or strategic guidance once they arrived on scene. In many instances, despite being tactical experts, SWAT command failed to provide any meaningful assistance during dangerous situations.

In the fatal shooting of Alan Gomez, 26 officers responded to a possible hostage situation. Even though SWAT responded to the scene, it appeared that SWAT command failed to establish scene control. A SWAT officer acted independently in setting up on the scene, and it

appears that little, if any, coordination was conducted to ensure that patrol officers could effectively address the situation. The SWAT officer also failed to participate in negotiations, even though the discussions with Gomez lasted nearly one hour. While the patrol officers were negotiating with Gomez, the SWAT officer unilaterally took a shooting position near the house. As the officers continued to negotiate with Gomez, the SWAT team member shot Gomez before he received approval from a supervisor.

Similarly, we reviewed another incident where several patrol officers responded to a home after learning that "Steve" had been involved in multiple armed robberies and was staying at the home. As the patrol officers arrived on the scene, Steve left the home and was followed by multiple patrol officers. Steve reportedly had suicidal thoughts and was carrying a firearm in a duffle bag. The patrol officers were able to negotiate with Steve in an open field and to convince him to get on his knees, although he maintained control of the duffle bag. As the patrol officers continued to negotiate with Steve for over one hour, a SWAT officer arrived on the scene. The SWAT officer failed to coordinate with the patrol officers, and SWAT command seemed to play no role in handling the situation. The SWAT officer instead positioned himself in a tactical shooting position. The SWAT officer also failed to communicate with his supervisor, even though the supervisor was on his way to the scene. This lack of communication is a pervasive practice that has contributed to tactical shortcomings at APD. As the patrol officers were awaiting a SWAT supervisor, the SWAT officer shot Steve multiple times. Several officers reported that they were surprised that the SWAT officer shot Steve. This is another example of how a SWAT command failure and deployment failure led to a fatal shooting.

In addition to its lacking deployment oversight, we also identified a troubling trend where SWAT officers failed to document and videotape deployments. This stands in stark contrast to the canine unit, which is actually a component of the SWAT unit and which more consistently documents and evaluates deployments. SWAT has the ability to document and record deployments just as thoroughly as the canine unit, but it has not done so. Supervisors—and again, the same supervisors who oversee SWAT also oversee the canine unit—have therefore been unable to determine whether SWAT's actions were reasonable, appropriate, and complied with the department's standards. They also could not assess the tactical effectiveness of deployments. This deficient control and understanding of SWAT officers' conduct contributes to the pattern of unreasonable use of force.

6. The Department's Aggressive Organizational Culture Contributes to Excessive Force Incidents.

The department's lack of internal oversight has allowed a culture of aggression to develop. This culture is manifested in the routine nature of excessive force and lack of corrective actions taken by the leadership to address force incidents. This culture is evident in the department's training, permissive policy on weapons, under-utilization of its crisis intervention team, overuse of SWAT, and the harsh approaches to ordinary encounters with residents. The failure of the department's leadership to address unnecessary uses of force reinforces the aggressive culture.

A lack of accountability in the use of excessive force promotes an acceptance of disproportionate and aggressive behavior towards residents. We reviewed numerous incidents demonstrating this approach. For example, in the incident involving "Charles," where he was

stopped by officers for failing to stop at a sign while riding his bicycle, the officers escalated the situation and shocked him with Tasers multiple times. According to the incident report, the officer essentially fired his Taser at Charles for failing to completely submit and obey commands. The initial officer called for backup when Charles failed to stop his bicycle immediately upon the officer's command; ultimately three officers approached him. Their use of force against a perplexed cyclist is just one of many episodes in which officers expressed hostility toward people not engaged in the commission of any crimes. An officer's decision to use his Taser on Ivan is another example. Ivan was unconscious on a couch during a party. When he was roused by the officer and obviously confused, he started to struggle while still prone on the couch. The officer escalated the situation instead of altering his approach given Ivan's condition. Both of these incidents were approved by supervisors in subsequent reports that found the force reasonable.

As mentioned above, APD's training is focused so heavily on weaponry and force scenarios that officers do not get essential tools to engage in effective de-escalation methods. The training is an element of the culture of aggression. Once officers complete their training, they are allowed to carry non-standard issued weapons that are approved by the range master.[54] We were informed that many officers purchase expensive, high-powered guns as soon as they are allowed, using their own money. Officers see the guns as status symbols. APD personnel we interviewed indicated that this fondness for powerful weaponry illustrates the aggressive culture.

This aggressive culture is also evident in many of the force reports that we reviewed, in incidents recounted to us by community witnesses, and in widely available videos of officers using force against non-combative individuals. We interviewed numerous people who relayed accounts of harsh treatment by officers. The incident involving "Nick" illustrates this point. He provided video footage showing an officer choking him after he stepped out of his car during a stop for driving while intoxicated. In another incident, an officer grabbed, yelled at, and attempted to handcuff "Omar" when he was helping an accident victim and did not get out of the officers' way quickly enough for the officer. Omar tried to explain that he was compressing the victim's wound and using his training as an emergency medical technician, but the officer seemed concerned only with his immediate compliance. Additionally, we have reviewed reports and publicly available videos of officers slamming a man's head against a tree plantar on a sidewalk, using a Taser on an obviously subdued man, and punching a man who had done nothing to the officer or anyone else. Few supervisors tried to address these problems. When supervisors did attempt to correct these officers, many complained about the dearth of support from department leadership when they attempted to address problematic conduct. These incidents and the failure to require corrective action demonstrate a culture that emphasizes force and complete submission over safety. The department's leadership does not address these issues and, as such, sends a message that such conduct is acceptable. This culture contributes to the use of excessive force.

7. The Department's Limited External Oversight Contributes to the Pattern or Practice of Unconstitutional Uses of Force.

Independent, external oversight of a police agency—oversight that is exercised by individuals or institutions that are not part of or beholden to the agency or its leadership—helps

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[54] Firearms and Ammunition Authorization Policy 2-22.

strengthen community trust. Independent oversight can identify deficiencies in a police agency's own internal reviews, provide a transparent process for resolving complaints against an agency, and build confidence in an agency by bringing the public into the process of assessing and improving it.

Albuquerque has adopted an external oversight structure that has two primary components: the Police Oversight Commission ("the Commission") and the Independent Review Officer ("the Review Officer"). Briefly, the Review Officer is appointed by the Mayor and paid by the City to investigate all officer-involved shootings and all complaints filed against the Department by civilians. The Review Officer is assisted by a staff of paid investigators, and she reports her findings at public meetings of the Police Oversight Commission. The Commission is made up of volunteer Commissioners from across the city appointed by the Mayor. The Commission holds regular public meetings to consider the reports of the Review Officer and make recommendations to the Chief of Police on whether officers have violated the Department's policies. The Chief retains complete discretion over whether policy violations in fact occurred and whether officers should be disciplined.

To assess the effectiveness of Albuquerque's external oversight structure, we interviewed the current Review Officer and members of the Commission. We also reviewed the reports of the Review Officer and recommendations of the Commission for all fatal police shootings between 2009 and 2012 for which such reviews have occurred. In addition, we analyzed the city ordinance that established and governs the Commission and the Review Officer, as well as other information we received.

Albuquerque's external oversight structure could do much more to address unreasonable uses of deadly force, and it is apparent from our review of documents and interviews that the failure to do so in the past has contributed to the pattern of unreasonable force that we have found. Members of the Albuquerque community have expressed concern that the Commission does not provide meaningful oversight of the department and that the Commission and the Review Officer have not weighed the evidence from their investigations appropriately.

We note that the Commission's work is limited in some ways by the collective bargaining agreement reached between the City and the officers' union, the Albuquerque Police Officers Association. That agreement limits the amount of information that the Commission can consider in reviewing specific cases, such as the identity of the officer whose alleged conduct is at issue and the officer's disciplinary history. Knowing an officer's identity and disciplinary history could provide important context for individual allegations of misconduct and help the Commission assess whether there is a pattern of problematic behavior.

Albuquerque's independent oversight structure could also do far more to involve the community and to provide opportunities to be heard to those making allegations of misconduct. Community members have limited opportunities to speak during the Commission's public meetings. Those who have filed complaints against officers are not provided any opportunities to be heard at any of the Commission's meetings before a decision is made on their cases except in the very limited public comment period, and so they cannot meaningfully contribute to the Commission's decision-making process.

Along those same lines, citizen complaints are subject to strict limitations that keep the Commission from being able to address potentially serious allegations of misconduct. The

ordinance that created the Police Oversight Commission requires complaints to be filed within 90 days of the incident or they will not be considered. In addition, by an agreement between the City of Albuquerque and the Albuquerque Police Officers Association, complaints must be personally signed by the complainant for the department to consider them "official" complaints that will be taken through the full review process. We believe these limitations unnecessarily restrict the work of the Commission and the ability of the public to bring police misconduct to light.

The ordinance that created the Commission and the position of the Review Officer directs the Review Officer to "play an active public role in the community." The current Review Officer has engaged in some public outreach, and we understand that her office would reach out to the public more frequently if it were able to hire a full-time staff member dedicated to community outreach. We believe this is an important function of the Review Officer, and we urge the City to support her in these efforts.

Nonetheless, from our review it appears that the Review Officer is more closely aligned with the department than with the community that the Review Officer serves. The Review Officer has failed to find violations of department policy in cases where it is more likely than not that violations clearly occurred, and, in at least one case, she has interpreted the department's policies in ways that are contrary to the policies themselves but favorable to officers. This occurred in the case of Mickey Owings, which was discussed above and involved an officer who shot Owings while he was fleeing in a car. The Review Officer interpreted the department's policy on firing at moving vehicles to apply only when an officer fires at the vehicle itself and not at the driver of a vehicle. The point of the policy, however, is not to protect cars from being damaged by gunshots; it is to keep officers from firing their weapons where doing so poses substantial risks to public safety. When an officer fires his gun at the driver of a moving vehicle, he is both firing at the vehicle and creating risks to public safety, issues that the Review Officer should have recognized.

The current Review Officer and her predecessor found very few violations of the department's policy on the use of deadly force in officer-involved shootings, which is at odds with the evidence as detailed in this letter. If we had reached different conclusions in just a handful of cases, it might have been attributable to a difference of opinion on the very fact-intensive questions that arise when analyzing officers' use of force. But we have reached different conclusions on far more than a handful of cases. Nor can the different conclusions we reached be attributed to any difference in the underlying materials that we reviewed; the current Review Officer and her predecessor had at least as much access to reports, witnesses, and other pertinent information on force encounters as we did. We are left with the conclusion that the current Review Officer and her predecessor have simply been too forgiving of the department's use of deadly force. They thus deprived the department of critical opportunities to correct its course, which contributed to the overwhelming pattern of unconstitutional use of deadly force that we find.

8. Inadequate Community Policing Contributes to the Department's Pattern or Practice of Unconstitutional Force.

Community policing is an effective strategy that enables law enforcement agencies and individuals and organizations they serve to develop solutions to problems and increase trust in

police. The department's leadership does not prioritize community policing, has not communicated its importance throughout the agency, and tolerates a culture that is hostile to community partnerships. These deficiencies have led to a mutual distrust between officers and the residents they encounter. It has contributed to the pattern or practice of excessive force.

Despite references to community policing in its policies and officer evaluations, the department does not consistently support the concepts of community policing. Community policing, also known as "smart policing," involves building partnerships between law enforcement and the people and organizations within its jurisdiction, engaging in problem-solving through proactive measures, and managing the police agency to support community partnerships and community problem-solving.[55] The focus on developing partnerships with the community is to engender trust and encourage the public to participate in identifying and addressing public safety concerns.[56] During our onsite tours, we observed that there was no consistent understanding of the department's community policing program within the ranks. Even commanders had inconsistent understandings of the agency's program. Moreover, commanders have no systems in place to analyze citizen contacts with officers outside of incident reports. They do not consistently review complaints to measure how officers are engaging the community.

The lack of organizational support for community policing was evident in the numerous, credible complaints we reviewed regarding the aggressive behavior of officers. Residents told us of encounters where officers were disrespectful and aggressive in their approach. For example, "Steven" contacted APD after accidentally shooting his wife in the hip. When officers arrived, they approached Steven in his front yard and immediately placed him in handcuffs. Officers knocked on the front door and pointed their weapons at Steven's sister-in-law as soon as she opened the door. The officers then entered the home and pointed their weapons at Steven's son, even though he was rendering aid to his mother. In another example, an officer threw "Rita's" documents on the street after a traffic stop when she challenged the basis of the stop. The citation was subsequently dismissed. The "Omar" incident where the officer grabbed and yelled at a man providing medical aid to an accident victim also shows a disregard for the community. These are but a few of the instances where residents expressed concerns about their negative interactions with officers.

A disconnect exists between officers and residents about the perception of overly aggressive conduct by officers. We observed that many officers were dismissive of community concerns. For instance, many officers complained that the media generated the complaints about

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55 U.S. Department of Justice, Community Oriented Policing Services (COPS), COMMUNITY POLICING DEFINED (Undated) at 1; Drew Diamond and Deirdre Meid Weiss, ADVANCING COMMUNITY POLICING THROUGH COMMUNITY GOVERNANCE: A FRAMEWORK DOCUMENT (2009) at 4.

56 COMMUNITY POLICING DEFINED at 3; *see also* Tyler and Fagan, *Legitimacy and Cooperation,* 6 Ohio St. J. Crim. L. 231, 267 (cooperation with the police increases when the public views the police as fair and legitimate); Tyler, WHY PEOPLE OBEY THE LAW at 163 (study verified that people believed procedures to be fair and authorities legitimate when they were provided opportunities to participate in the decision-making process).

their perceived aggressiveness in citizen encounters. Some officers also complained that the citizens were the ones who were aggressive towards them. This perception persists even though the data suggests otherwise.[57] These concerns suggest an unwillingness to embrace community policing. This rejection of one of the basic elements of community policing contributes to the department's pattern or practice of unjustified force.

V. REMEDIAL MEASURES

APD should implement the following remedial measures to address the deficiencies discussed in this letter:

A. Use of Force Policies

1. Revise the use of force policy to require that officers report any use of force, including the active pointing of firearms, above un-resisted handcuffing, and, even in cases of un-resisted handcuffing, when the subject complains of injury or excessive force.

2. Revise the use of force policy to clearly define "force" and specify the types of physical force that must also be reported, such as chokeholds, prone restraints, kicks, takedowns, leg sweeps.

3. Revise the use of force policy to prohibit shooting at vehicles.

4. Revise the use of force policy to place more emphasis on de-escalation techniques and require officers to consider less-intrusive alternatives before employing force.

5. Revise the use of force policy to prohibit the use of canines for crowd control.

6. Revise the use of force policy to prohibit supervisors and officers who were involved in, ordered, or authorized a use of force from assessing the reasonableness of the force.

7. In addition to a comprehensive use of force policy that incorporates all force options, including deadly and less lethal force, develop specific policies for each of the following areas: (a) deadly force; (b) firearms; (c) canines; (d) less lethal munitions; (e) Tasers; (f) chemical agents; (g) batons and impact weapons; (h) other force technology or weapon authorized by the department.

8. Require that a failure to report a use of force or prisoner injury by an officer shall subject the officer, including supervisors and commanders, to disciplinary action.

9. Ensure that officers request medical services immediately when an individual is injured or complains of injury following a use of force.

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[57] PERF Report, *supra* note 11, at 39-40 (noting that while assaults against police officers rose between 2006 and 2007, they declined between 2007 and 2008 and overall during 2005 to 2008). The FBI Law Enforcement Officers Killed and Assaulted reports from 2009 to 2011 show a steady rate of assaults on officers in the region; there was a slight increase in 2012. *See* FBI Law Enforcement Officers Killed and Assaulted *available at* http://www.fbi.gov.

10. Establish policies regarding force reviews and investigations. Require that force reviews and investigations determine whether the officer's conduct was justified and within agency policy.

11. Develop a reliable and accurate tracking system for all officers' use of force, all force reviews conducted by supervisors, all force investigations conducted by the internal affairs unit, and all command-level reviews.

12. Ensure that uses of force are promptly referred to the appropriate investigative unit or agency whenever a supervisor or reviewing officer finds evidence indicating apparent misconduct or criminal conduct by an officer.

B. Interacting with Individuals with Mental Illness and other Disabilities

1. Develop policies and implement procedures to improve the response to individuals in behavioral or mental health crisis, and to minimize the use of unnecessary force against such individuals.

2. Develop and implement protocols with the Crisis Intervention Team on how to handle interactions with individuals with known or suspected mental health issues, including those observably undergoing a mental health crisis, individuals with developmental disabilities, and individuals who appear to be intoxicated or impaired.

3. Require all officers to participate in crisis intervention training.

4. Expand the number of officers trained on how to handle interactions with individuals with mental health issues and individuals who appear to be intoxicated.

5. Review current policies and protocols concerning interactions with individuals with mental illness, developmental disabilities or other impairments to ensure they are consistent with applicable legal standards and generally accepted policing practice.

C. Tactical Units

1. Revise policies and procedures governing response to, and investigation of, high-risk incidents including specific guidance covering: encountering suicidal subjects, barricaded subjects, hostage situations, and high-risk traffic stops.

2. Require training for all tactical team members and supervisors in topics including: pre-deployment guidance and planning; incident deployment; scene control; and post-deployment reporting.

3. Establish eligibility criteria for all staff and supervisors assigned to tactical units and conduct regular (at least annual) reviews of tactical team members to ensure that they meet delineated criteria.

4. Provide tailored annual training to all staff and supervisors assigned to tactical units, including training on effective deployment, scene control, and post-deployment reporting.

D. Training

1. Implement scenario-based training and role playing to ensure officers understand de-escalation techniques and when force is justified. This should also include training on changes to policy, new equipment, and tactical methods.

2. Train officers to use appropriate hands-on techniques following the first application of less-lethal force, when feasible, to complete an arrest, and to use as few cycles of Taser as possible.

3. Train officers to avoid using more intrusive forms of force on individuals who do not pose a threat to the safety of the officers and others.

4. Train officers to give verbal warnings, where feasible, before using force.

E. Internal Investigations and Civilian Complaints

1. Revise the civilian complaint policy to eliminate the 90-day reporting period, allow for the investigation of anonymous and third-party complaints, and eliminate the requirement that complainants sign the complaint.

2. Revise all forms and instructions on the civilian complaint process that can be construed as discouraging civilians from submitting complaints, including warnings regarding potential criminal prosecution for false or untrue complaints.

3. Develop investigative standards and protocols for force investigations conducted by the internal affairs unit.

4. Require that all officers and employees report misconduct, including apparent, alleged, or perceived misconduct, by another officer or employee to a supervisor or directly to the internal affairs unit for review and investigation.

5. Ensure that investigations of officer misconduct are thorough and that findings are consistent with the facts.

F. Management and Supervision

1. Require that supervisors perform the following actions in response to any use-of-force incident: (a) ensure that a medical unit report to the scene of every use of force resulting in injury, actual or complained; (b) conduct a thorough analysis of the incident based on all obtainable physical evidence, adequately descriptive use-of-force reports, witness statements, and independent investigation; (c) resolve any discrepancies in use-of-force reports or witness accounts and explain all injuries; (d) ensure that the recording policy was followed; and (e) complete a summary analysis regarding the reasonableness, proportionality, and legality of the force. If the supervisor cannot resolve any factual discrepancies, determine the source of any injury, or determine the lawfulness of a use of force, the supervisor should refer the matter immediately and directly to his or her supervisor and to internal affairs. Every level of supervision should be held accountable for the quality of the first-line supervisor's force investigation.

2. Require a critical firearm discharge review process led by a command-level review team to evaluate all investigations involving critical firearm discharges. The team should be chaired by the commanding officer. The process should include specific determinations regarding whether the force used was consistent with the department's policy and training, whether lesser force alternatives were available, what non-disciplinary corrective actions should be taken, and what policy or training amendments should be effectuated. An annual review of patterns in critical incidents should be completed and reported to the Chief.

3. Require supervisors to review and take appropriate disciplinary or non-disciplinary corrective action, where warranted, in situations where he or she becomes aware of potential misconduct or criminal behavior by an officer.

4. Expand the Early Intervention System to track supervisor and area command activity. Require supervisors to conduct timely reviews that identify patterns in officer behavior and specific training deficiencies.

5. Change the Early Intervention System thresholds by: (a) adjusting thresholds based on comparison data that takes officer assignment into account; (b) creating single-event thresholds for events so critical that they require immediate department intervention; (c) implementing rolling thresholds, so that an officer who has received an intervention for use of force should not, for example, be permitted to engage in four additional uses of force before again triggering a review; (d) expand the elements or performance indicators tracked by the system; and (e) evaluate whether thresholds are in line with national standards.

6. Monitor uses of force to ensure consistency with the policies, and enforce the policies when force is used inappropriately.

7. Ensure that an adequate number of qualified first-line supervisors are deployed in the field to allow supervisors to provide close and effective supervision to each officer under the supervisor's direct command, provide officers with the direction and guidance necessary to improve and develop as officers, and to identify, correct, and prevent misconduct.

G. Recruitment and Selection

1. Ensure that the department's officer hiring and selection processes meet minimum standards for recruiting and an objective process for selection that employs reliable and valid selection devices that comport with generally accepted policing practices and federal anti-discrimination laws.

2. Require that all candidates for sworn personnel positions, including new recruits and lateral hires, undergo a valid psychological, medical, and polygraph examination to assess their fitness for employment.

3. Ensure that thorough, objective, and timely background investigations of candidates for sworn personnel positions are conducted in accordance with generally-accepted policing practice and federal anti-discrimination laws.

4. Develop objective selection criteria to ensure promotions are based on knowledge, skills, and abilities that are required to perform supervisory and management duties successfully in core substantive areas. Provide clear guidance on promotional criteria, and prioritize effective, ethical, and community-oriented policing as criteria for promotion. These criteria should account for experience, civil rights and discipline record.

5. Establish procedures that govern the removal of officers from consideration from promotion for disciplinary action related to serious misconduct.

H. Community Policing and Oversight

1. Develop a comprehensive program of community outreach that emphasizes the department's role as part of the Albuquerque community and in partnership with and service to all residents of the City.

2. Provide necessary information and sufficient resources to civilian oversight entities, so that they can meaningfully evaluate citizen complaints against officers and engage the community.

3. Create robust community relationships and engage constructively with the community to ensure collaborative problem-solving and consistent feedback from diverse sectors of the community.

4. Revise the civilian oversight process to ensure that an effective system of review and approval is implemented that includes review of serious uses of force and officer-involved shootings. The oversight process should also have the resources and support necessary to assess and make recommendations regarding the department's operations and performance that need improvement.

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We share your sense of urgency in ensuring that the City of Albuquerque has an effective, accountable police department that controls crime, ensures respect for the Constitution, and earns the trust of the public it is charged with protecting. Recent events have galvanized many in the Albuquerque community to join the public discourse over the future of the Albuquerque Police Department and its relationship with the community. We look forward to working with you, the department, and the community to address our findings and forge a path forward to restore public trust and promote constitutional policing in Albuquerque. Those affected by our findings and the men and women of APD who serve the City honorably deserve no less. Please note that this letter is a public document and will be posted on the Civil Rights Division's website.

We hope to hear from you soon to begin discussions of the necessary reforms.

Sincerely,

/s/

Jocelyn Samuels
Acting Assistant Attorney General
Civil Rights Division

/s/

Damon P. Martinez
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