CITY of ALBUQUERQUE
TWENTY SEVENTH COUNCIL

COUNCIL BILL NO. O-26-3 ENACTMENT NO. ________________________

SPONSORED BY: Joaquín Baca, Nichole Rogers, Dan Champine, Brook Bassan

ORDINANCE

AMENDING CHAPTER 2, ARTICLE 11 OF THE REVISED ORDINANCES OF ALBUQUERQUE, NEW MEXICO (ROA 1994), TO ADD A NEW SECTION REGULATING INDIRECT OVERHEAD (IDOH) CHARGES TO CAPITAL FUNDS ESTABLISHING AN IDOH RATE CAP; REQUIRING ANNUAL REPORTING AND TRANSPARENCY; AND ALIGNING ELIGIBLE USES WITH CAPITAL DELIVERY STANDARDS.

WHEREAS, the Department of Municipal Development (DMD) administers capital projects through the City's Capital Implementation Program (CIP), funded by voter-approved General Obligation Bonds and other capital sources; and

WHEREAS, to offset administrative and project management costs, the City assesses an Indirect Overhead (IDOH) rate to capital funds; and

WHEREAS, over the past decade, IDOH rates charged to CIP have fluctuated significantly—from a low of 1.04% in FY24 to a high of 8.0% in FY26—raising concerns about transparency, consistency, and appropriate use of capital funds; and

WHEREAS, the purpose of IDOH is to recover actual, allowable indirect costs that support capital project delivery, but not to subsidize general departmental or operational expenses; and

WHEREAS, the City Council seeks to formalize the process for calculating, applying, and reporting IDOH, ensuring fair use of capital funds and restoring public confidence in capital project budgeting.

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

SECTION 1. A NEW SECTION OF LAW IS HEREBY ADDED TO THE REVISED ORDINANCES OF ALBUQUERQUE, CHAPTER 2, ARTICLE 11, AS FOLLOWS:

§ 2-11-18 Indirect Overhead Charges to Capital Funds

(A) Purpose. To ensure that charges to capital project funds for indirect overhead (IDOH) are reasonable, transparent, and tied to capital project delivery costs.

(B) Definitions.

Indirect Overhead (IDOH): Costs not directly attributable to a specific capital project but necessary to support project delivery (e.g., project management, procurement, and fiscal oversight).

CIP: The Capital Implementation Program.

CPI-U: The Consumer Price Index for All Urban Consumers, as published by the U.S. Bureau of Labor Statistics.

(C) IDOH Rate Cap. The IDOH rate assessed by the Department of Administration and Finance (DFAS) and/or the Department of Municipal Development Capital Improvement Program (DMD/CIP) to capital funds shall not exceed the lesser of:

(1) 4.75%, or

(2) An annual increase equal to the percentage change in the CPI-U (12-month average ending January 1 of each year).

(3) A higher rate may only be applied if:

(a) A written justification is submitted to City Council;

(b) A cost allocation plan is provided;

(c) City Council approves the higher rate during the budget adoption process.

(D) Allowable Charges. Only staff and functions directly related to the planning, design, implementation, execution, and construction oversight of capital projects may be included in IDOH.

(1) Functions excluded from IDOH billing include:

(a) Human Resources, Legal, or Payroll unless directly assigned to CIP;

(b) Executive administrative functions;

(c) General departmental planning or policy roles not tied to specific projects.

(2) Public Safety Restriction. No IDOH charges shall be assessed to support the operations, personnel, or administrative overhead of any Public Safety Department, including but not limited to the Albuquerque Police Department (APD), Albuquerque Fire Rescue (AFR), Albuquerque Community Safety (ACS), or any future reorganized entities that serve primarily a public safety function.

(3) IDOH shall not be charged, assessed, encumbered, or otherwise applied to capital funds for the acquisition of equipment, vehicles, materials, or furnishings, regardless of whether such items are associated with or used in support of a capital project.

(a) Fiscal, accounting, or financial management positions may be included in Indirect Overhead (IDOH) only if the employee's duties are primarily and directly dedicated to supporting the City's Capital Implementation Program.

(b) Fiscal or financial staff supporting non-CIP capital activities, operating programs, or general departmental functions shall not be eligible for IDOH recovery.

(c) Inclusion of such positions shall require documentation demonstrating:

(i) The specific CIP-related functions performed;

(ii) The percentage of time allocated exclusively to CIP activities; and

(iii) That the position is not performing general departmental, citywide, or operating budget functions.

(E) Annual Reporting. No later than March 1 of each fiscal year, DFAS and/or DMD shall provide to the City Council:

(1) A detailed IDOH rate calculation;

(2) A list of IDOH funded positions across all departments and their percentage allocations to capital;

(3) A reconciliation of prior year projections to actual expenditures.

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(4) The final IDOH rate and supporting documentation shall be published on the City's capital transparency website.

(F) Oversight. The City Council retains the authority to modify or reject the proposed IDOH rate as part of the annual Budget adoption. The Office of Internal Audit or Inspector General may review IDOH practices for compliance with this section.

(G) Controls on Department Charges to Councilor Capital Activities.

(1) No department may submit journal entries (JEs), journal vouchers (JV's) labor recovery adjustments, or invoices transferring costs to any Councilor capital activity (Fund 305 or otherwise) without:

(a) Prior written approval from the Council Services Fiscal Manager or their designee confirming the request is appropriate and within the budgeted scope of the project as approved by the Councilor's office; and

(b) Final approval from Council Services staff within the City's financial system of record (e.g., PeopleSoft or any successor platform) before the transaction is processed.

(2) Administrative or supervisory costs related to internal departmental coordination, work review, or supervision of capital-related activities shall not be charged to Councilor capital activities when the department is already recovering those costs through IDOH or other indirect mechanisms.

(3) Any such charges made without prior approval or in violation of this section shall be reversed within 30 days of notice from the Council Services Fiscal Manager, or their designee.

(4) All departments must document and submit their cost recovery methodology for Councilor-funded projects upon request, including how administrative costs are treated and to which accounts they are charged.

(H) Application of Indirect Overhead.

(1) IDOH may only be applied to eligible capital project costs as defined in this ordinance section (§ 2-11-18). IDOH shall not be automatically applied based solely on the use of a capital fund and shall not be applied to ineligible costs, including equipment purchases. For purposes of this section, the application of IDOH includes any charge or reservation of funds, whether by expenditure, encumbrance, or other accounting entry.

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(2) IDOH associated with a capital project shall be calculated and applied based on the IDOH rate in effect during the fiscal year in which the project first incurs eligible capital expenditures. IDOH rates adopted in subsequent fiscal years shall not be applied retroactively to prior-year encumbrances, purchase orders, or project authorizations.

(3) For multi-year capital projects, IDOH shall only be applied prospectively to eligible expenditures incurred in the fiscal year in which the expenditure occurs and shall be the lesser of the IDOH rate in effect when the project first incurred eligible capital expenditures or the IDOH rate in effect at the time the expenditure is incurred.

(I) Notwithstanding any provision to the contrary, the BioPark GRT Fund shall not be subject to an indirect overhead rate exceeding five percent (5%) through Fiscal Year 2031, consistent with the Memorandum of Understanding titled “Memorandum of Understanding Between the BioPark Society and the City of Albuquerque Related to Mutual Support of BioPark GRT Fund,” executed and effective as of June 24, 2025. The terms of said agreement shall guide the treatment of indirect overhead charges for all applicable BioPark capital projects during the life of the agreement.

SECTION 2. SEVERABILITY. If any section, paragraph, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional, such decision shall not affect the remaining portions.

SECTION 3. EFFECTIVE DATE. This Ordinance shall become effective immediately upon publication. The provisions of this new ordinance shall apply retroactively to July 1, 2025, the beginning of Fiscal Year 2026. Any amounts charged to capital funds for indirect overhead in excess of the allowable cap shall be reversed or refunded through a budget adjustment and reported to the City Council no later than February 1, 2026.

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