



**POLICY GOVERNING UNAUTHORISED,  
IRREGULAR, FRUITLESS AND WASTEFUL  
EXPENDITURE (UIF&W) FOR THE NELSON  
MANDELA BAY METROPOLITAN  
MUNICIPALITY (VERSION 3)**

## POLICY HISTORY

<b>TITLE OF POLICY</b>	Policy Governing Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIF&W) for the Nelson Mandela Bay Metropolitan Municipality (Version 3)						
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<b>DOCUMENT HISTORY:</b>							
<b>Policy Title</b>	<b>Status</b> <small>(current, revised, no change, redundant)</small>	<b>Approving Authority</b>	<b>Decision date</b>	<b>Resolution No.</b>	<b>Ref No.</b>	<b>Doc No.</b>	<b>Pending date for next review</b>
Policy Governing Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIF&W) V3	Active	Council	13 10 2022		5/20/P		13-10-2025
Policy Governing Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIF&W) V2	Rescinded	Council	24 05 2018		5/20/P		3 years
Policy Governing Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIF&W)	Rescinded	Council	01 12 2016		5/20/P		3 years

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## 1. DEFINITION OF KEY WORDS

“*Accounting Officer*”, as defined in the Local Government: Municipal Finance Management Act (MFMA) 56 of 2003, the municipal official referred to in section 60 of the said Act, and includes a person acting as the accounting officer. The terms *Municipal Manager/City Manager* has corresponding meaning;

“*Allocation*”, in relation to a municipality, means:

- (a) a municipality’s share of the local government’s equitable share referred to in section 214(1)(a) of the Constitution;
- (b) an allocation of money to a municipality in terms of section 214(1)(c) of the Constitution;
- (c) an allocation of money to a municipality in terms of a provincial budget; or
- (d) any other allocation of money to a municipality by an organ of state, including by another municipality, otherwise than in compliance with a commercial or other business transactions.

“*Budget and Treasury*” means the office within the *Municipality* responsible for its financial management, as referred to in Chapter 9 of the MFMA;

“*emergency*” is defined as a serious, unexpected, and often dangerous situation requiring immediate action, where the situation may give rise to:

- (a) Threats to human life or safety;
- (b) Threats of interruptions in the provision of essential services to the community and the functioning of the Metro as a whole;
- (c) The threat of a major unanticipated expense to the municipality (e.g. damage to property); and
- (d) The possibility of damage to the natural environment.

For the purposes of this policy, an emergency does not include expenditure incurred as a result of poor planning.

*“Financial year”* is defined as period from 01 July of the one year to 30 June of the next year.

*“Fruitless and wasteful expenditure”* as defined in the Local Government: Municipal Finance Management Act 56 of 2003, means expenditure that was made in vain and would have been avoided had reasonable care been exercised. The phrase *‘made in vain’* indicates that the municipality derived no value for money from the expenditure or the use of other resources. Fruitless and wasteful expenditure must fulfil both the conditions in the definition, namely, that it was made in vain and it would have been avoided had reasonable care been exercised.

*“Irregular expenditure”*, as defined in the Local Government: Municipal Finance Management Act 56 of 2003, in relation to a municipality or municipal entity, means:

- (a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the MFMA, and which has not been condoned by National Treasury in terms of section 170;
- (b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;
- (c) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or
- (d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of *“unauthorised expenditure”*.

*“Limitation of Scope”* is a restriction on an audit that is caused by the client, due to issues beyond the control of the client, or other events that do not allow the auditor to complete all aspects of his or her audit procedures.

*“Mayor”* as defined in the Local Government: Municipal Finance Management Act 56 of 2003 means the councillor elected as the executive *mayor* of the Municipality in terms of section 55 of the Local Government: Municipal Structures Act.

*“Municipality”* means the Nelson Mandela Bay Metropolitan Municipality.

*“Overspending”* –

- (a) in relation to the budget of a municipality, means causing the operational or capital expenditure incurred by the municipality during financial year to exceed the total amount appropriated in that year’s budget for its operational or capital expenditure as the case may be;
- (b) in relation to a *vote*, means causing expenditure under the *vote* to exceed the amount appropriated for that *vote*; or
- (c) in relation to expenditure under section 26, means causing expenditure under that section to exceed the limits allowed in subsection (5) of that section.

*“Political Office Bearer”* means the speaker, executive *mayor*, *mayor*, deputy *mayor*, or a member of the executive committee as referred to in the Municipal Structures Act (No. 117 of 1998).

*“Senior Manager”*, means a manager referred to in section 56 of the Local Government: Municipal Systems Act (No. 32 of 2000).

*“the Policy”* means the Policy Governing Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIF&W) for the Nelson Mandela Bay Metropolitan Municipality (Version 3).

“*Unauthorised expenditure*”, as defined in the Local Government: Municipal Finance Management Act 56 of 2003, in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3) of the MFMA, and includes –

- (a) overspending of the total amount appropriated in the municipality’s approved budget;
- (b) overspending of the total amount appropriated for a *vote* in the approved budget;
- (c) expenditure from a *vote* unrelated to the department or functional area covered by the *vote*;
- (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
- (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of “allocation” in the MFMA otherwise than in accordance with any conditions of the allocation; or
- (f) a grant by the municipality otherwise than in accordance with the MFMA.

“*Vote*”, as explained under Section 1 of the MFMA read in conjunction with National Treasury Circular 12, means:

- (a) One of the main segments into which a budget of a municipality is divided for the appropriation of money for the different department or functional areas of the municipality; and
- (b) which specifies the total amount that is appropriated for the purposes of the department or functional area concerned.

## **2. PURPOSE**

2.1 The purpose of *the Policy* is to define and determine how to address the *unauthorised, irregular or fruitless and wasteful (UIF + W) expenditure* in the *Municipality, and / or dealing with such matters.*

- 2.2 *The Policy* furthermore seeks to establish processes on how to:
- a) prevent *unauthorised, irregular or fruitless and wasteful expenditure* as compelled by the Municipal Finance Management Act (56 of 2003);
  - b) identify and investigate *unauthorised, irregular or fruitless and wasteful expenditure*;
  - c) respond appropriately in accordance with the law;
  - d) address and report on instances of *unauthorised, irregular or fruitless and wasteful expenditure* conclusively and;
  - e) deal with the *Limitation of Scope*.
- 2.3 The Municipal Finance Management Act (56 of 2003) instructs that *Senior Managers* and other officials of the *Municipality* exercising financial management responsibilities take all reasonable steps to ensure that “any *unauthorised, irregular or fruitless and wasteful expenditure* and any other losses are prevented” (See sections 62(1)(d), 78(1)(c) and 81(1)(d)).

### **3. OBJECTIVES**

- 3.1 The objectives of this policy include *inter alia* the following:
- a) Ensuring that Directorates have a clear and comprehensive understanding of the procedures they must follow when dealing with *unauthorised, irregular or fruitless and wasteful expenditure*;
  - b) Ensuring that resources made available to Directorates are utilised efficiently, effectively, economically and for authorised purposes as required in terms of the legislation governing municipal affairs; and
  - c) Ensuring that *irregular, unauthorised or fruitless and wasteful expenditure* is detected, processed, recorded, and reported timeously.



## 4. REGULATORY FRAMEWORK

4.1 *The Policy* is informed and guided by, among others, the following statutes and regulations:

- a) Section 32 of the Local Government: Municipal Finance Management Act 56 of 2003 (MFMA) regulates *unauthorised, irregular or fruitless and wasteful expenditure*;
- b) Section 170 of the Local Government: Municipal Finance Management Act 56 of 2003 which regulates departures from treasury regulations and condonation thereof;
- c) Local Government: Municipal Finance Management Act 56 of 2003: Municipal Budget and Reporting Regulations, dated 17 April 2009;
- d) Local Government: Municipal Finance Management Act 56 of 2003: Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings; and
- e) National Treasury, Municipal Finance Management Act 56 of 2003 Circulars as issued by National Treasury from time to time.

## 5. SCOPE OF APPLICATION

5.1 The *Policy* applies to the *Municipality* and can also be extended to the municipal entity/ies, as funds that are expensed by the municipal entity/ies must be incurred in terms of the applicable legislation to the parent *municipality*. This policy is applicable to all employees of the *Municipality*, whether permanent, contractual or temporary.

## 6. VARIOUS ROLES AND RESPONSIBILITIES

- 6.1 The MFMA outlines the responsibilities of the *Accounting Officer / Senior Managers / Officials* responsible for financial management in the *Municipality*, which include amongst others the following: -
- a) To exercise all reasonable care to prevent and detect *irregular, unauthorised, fruitless and wasteful expenditure* and must for this purpose implement effective, efficient and transparent processes of financial and risk management.
  - b) To inform, in writing the *Mayor*, executive committee, and *Council*, as the case may be, if a decision is taken which, if implemented, is likely to result in *irregular, unauthorised, fruitless and wasteful expenditure*.
  - c) On discovery of any *irregular, unauthorised, fruitless and wasteful expenditure* to report promptly in writing, the particulars of the expenditure to the *Accounting Officer* or *Senior Manager* (whichever is applicable).
- 6.2 *Senior managers* and those officials that are duly delegated manage the finances of the *Municipality* have the following responsibilities:
- a) Identifying the identity of the person who is liable for causing *unauthorised, irregular or fruitless and wasteful expenditure*.
  - b) Reporting the transaction in line with Section 32 of the MFMA to all the required structures of *Council*.
  - c) Determine how to recover *unauthorised, irregular or fruitless and wasteful expenditure* from the person liable for that expenditure (in line with Section 32 of the MFMA).
  - d) Determining the amount of *unauthorised, irregular or fruitless and wasteful expenditure* to be recovered, written off (in line with Section 32 of the MFMA).
  - e) Section 32 of the MFMA further prescribes processes that must be followed to deal with, *unauthorised, irregular, fruitless and wasteful expenditure*, as such this section must be adhered to when dealing with these matters.

## 7. UNAUTHORISED EXPENDITURE<sup>1</sup>

### 7.1 Process of Dealing with Unauthorised Expenditure

- 7.1.1 Any municipal employee who becomes aware of, or suspects the occurrence of *unauthorised expenditure* must promptly report, in writing, such expenditure to the respective *Accounting Officer* or his/her delegated *Senior Manager/s*.
- 7.1.2 On discovery of alleged *unauthorised expenditure*, such expenditure must be left in the account, i.e. relevant *vote*, and the *Accounting Officer* or his/her delegated *Senior Manager* should record the details of the expenditure in an *unauthorised expenditure* register. **(Refer Annexure “A”)**.
- 7.1.3 The *Accounting Officer* or his/her delegated *Senior Manager/s* must investigate the alleged *unauthorised expenditure* to determine whether the expenditure meets the definition of *unauthorised expenditure*.
- 7.1.4 During the period of investigation, the expenditure must remain in the expenditure account. The results of the investigation will determine the appropriate action to be taken regarding the expenditure.
- 7.1.5 Should the investigation reveal that the expenditure is in fact valid expenditure and therefore does not constitute *unauthorised expenditure* the details of the expenditure should be retained in the register for completeness purposes (and to provide an appropriate audit trail). The register must then be updated to reflect the outcome of the investigation.
- 7.1.6 If the investigation indicates that the expenditure is in fact *unauthorised expenditure* the *Accounting Officer* must promptly report, in writing, the particulars of the expenditure to the *Mayor, MEC for Local Government and Auditor General*.
- 7.1.7 *Council* must refer the matter to the select Committee (namely Municipal Public Accounts Committee (MPAC) or the Technical Section 32 Committee) that must independently investigate the matter and advise *Council* accordingly.

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<sup>1</sup> NB: In order for any expenditure to be classified as unauthorised expenditure as defined under section 1 of this Policy, it must have already been incurred by the municipality (i.e. the money has left the bank account of the municipality).

- 7.1.8 If *Council* subsequently certifies the *unauthorised expenditure*, the *Municipality* requires no further action as the amount has already been expensed in the Statement of Financial Performance (Income Statement). The register should be updated to reflect the fact that the *unauthorised expenditure* was certified by *Council*.
- 7.1.9 If however, *Council* does not certify the amount, the *Accounting Officer* must take effective and appropriate action to recover the amount from the responsible person as recommended by the relevant Committee / structure of *Council*.
- 7.1.10 Actions taken by the *Accounting Officer and or Council* may include escalating the matter to the Disciplinary Board established in line with the Local Government: Municipal Finance Management Act (56 of 2003): Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings for appropriate conclusion of the matter.
- 7.1.11 Unauthorised expenditure resulting from non-cash transactions, identified at financial year-end upon concluding the audit of the annual financial statements by the Auditor General South Africa (AGSA) or periodically during the financial year, may be taken directly to *Council* for its approval.

## 7.2 **Authorising Unauthorised Expenditure**

- 7.2.1 In considering authorisation of *unauthorised expenditure*, *Council* must take into account the following factors: -
- a) Has the matter been referred to *Council* for a determination and decision?
  - b) Has the nature, extent, grounds and value of the unauthorised expenditure been submitted to *Council*?
  - c) Has the incident been referred to a *Council* committee (e.g. MPAC or Disciplinary Board, etc) for investigation and recommendations?
  - d) Has it been established whether the *Accounting Officer* or official or public office bearer that made, permitted or authorised the unauthorised expenditure acted deliberately or in a negligent or grossly negligent manner?

- e) Has the *Accounting Officer* informed *Council*, the *Mayor* or the Executive Committee that a particular decision would result in an *unauthorised expenditure* as per section 32(3) of the MFMA?
- f) Is this unauthorised expenditure resulting from cash or non-cash transaction?
- g) Are there good grounds shown as to why an *unauthorised expenditure* should be authorised? For example: The *Mayor*, *Accounting Officer* or official was acting in the best interests of the *Municipality* and the local community by making and permitting *unauthorised expenditure*, and the *Municipality* has not suffered any material loss as a result of the action.

7.2.2 In these instances, the Council may authorise the *unauthorised expenditure*.

7.2.3 If *unauthorised expenditure* is approved by Council, there would be no further consequences for the political office-bearers or officials involved in the decision to incur the expenditure, and the UIF&W Register must be updated accordingly.

### 7.3 **Adjustments budgets to authorise the unauthorised expenditure**

7.3.1 In line with the requirements of the MFMA read in conjunction with the Municipal Budget and Reporting Regulations (MBRR) (32141 of 2009) *Council* may only authorise *unauthorised expenditure* in an adjustments budget as follows:

(a) **Adjustments budget for unforeseen and unavoidable expenditure**

- (i) An adjustments budget to allow *Council* to provide ex-post authorisation for unforeseen and unavoidable expenditure that was authorised by the *Mayor* in terms of section 29 of the MFMA must be tabled in *Council* at its next meeting or within 60 days after the expenditure was made.
- (ii) Should either of these timeframes be missed, the unforeseen and unavoidable expenditure must be treated in the same manner as any other type of *unauthorised expenditure*, and may still be authorised in one of the other adjustments budget processes described below.

- (b) Main adjustments budget
- (i) Council may authorise *unauthorised expenditure* in the adjustments budget which may be tabled in Council “at any time after the mid-year budget and performance assessment has been tabled in council, but not later than 28 February of the financial year” as required in terms of the MFMA read in conjunction with the MBRR. Where unauthorised expenditure from this period is not identified or investigated in time to include in the adjustments budget, it must be held over to the following adjustments budget process noted below.
- (c) Special adjustments budget to authorise unauthorised expenditure
- (i) Council may authorise *unauthorised expenditure* in a special adjustments budget tabled in Council when the Mayor tables the annual report. This special adjustments budget “may only deal with *unauthorised expenditure* from the previous financial year which the council is being requested to authorise in terms of section 32(2) (a) (i) of the MFMA.”
- (ii) This approach is normally followed when the Annual Financial Statements for the previous financial year are concluded being audited by the office of the AGSA upon which the full picture is confirmed.
- (iii) Approval by Council of unauthorised expenditure will result in an amendment to the budget figures in the accounting programme, even after a year end has been completed, and also updating the UIF&W Register in the event that the expenditure was already included in the register.

#### 7.4 **Recovery of Unauthorised Expenditure**

- 7.4.1 All instances of *unauthorised expenditure* must be recovered from the liable official or political office-bearer, upon following due processes or investigations, unless the unauthorised expenditure has been authorised by Council in an Adjustments Budget based on assessment of the related transaction and the reasons thereof.
- a) The *Accounting Officer* (or his/her delegate or proper structure/s created for this purpose) must determine who the responsible party is from whom the

amount should be recovered. This information would normally become evident while performing the investigation.

- b) The *Accounting Officer* (or his/her delegate) must, in writing, request the liable official or political office-bearer to pay the amount relating to such *unauthorised expenditure* within 30 days. If the person/s fails to comply with the request, the matter may be handed to the *Municipality's* legal department for the recovery of the debt through normal debt collection process handled by *Budget and Treasury Directorate*.

## **8. IRREGULAR EXPENDITURE<sup>2</sup>**

### **8.1 Some examples of Irregular Expenditure**

8.1.1. As per the definition *Irregular expenditure* can be incurred as a result of non-compliance with a National Treasury Regulations, the MFMA and the *Municipality's* Supply Chain Management Policy, Municipal Systems Act, Public Office Bearer's Act, etc. There will be many reasons within which an expenditure can be categorised as irregular and determination of such can only be on a case-by-case basis. The following are some examples that can be used in order to illustrate irregular expenditure cases: -

#### ***Examples:***

- a) Procuring of goods or services by means of quotations where the value of the goods/services exceed the set threshold as determined in the SCM policy.
- b) Expenditure incurred as a result of procuring goods or services other than by means of competitive bids where the reason for deviating from the prescribed processes is as a result of poor planning.
- c) Expenditure resulting from non-adherence to the delegation of authority as approved.

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<sup>2</sup> NB: In order for any expenditure to be classified as irregular expenditure as defined under section 1 of this Policy, it must have already been incurred by the municipality (i.e. the money has left the bank account of the municipality).

- d) Expenditure incurred as a result of expenditure outside contract period or contracts expired and not extended in terms of section 116 of the MFMA.
- e) Variation orders implemented without proper authorities.
- f) Utilising a service provider for construction or related work outside the approved *Construction Industry Development Board (CIDB) Grading*.

8.1.2 There could be many more examples that can be used to explain the irregular expenditure examples and how they can be cased, the above list must not be viewed as complete.

## 8.2 **Procedures for the Condonation of Irregular Expenditure**

8.2.1 In terms of section 32(2)(b) of the MFMA *irregular expenditure* may only be written-off by *Council* if, after an investigation by a *Council* committee, the irregular expenditure is certified as irrecoverable. In other words, writing-off is not a primary response, it is subordinate to the recovery processes, and may only take place if the irregular expenditure is certified by *Council* as irrecoverable, based on the findings of an investigation.

8.2.2 In terms of section 170 of the MFMA, only the National Treasury may condone non-compliance with a regulation issued in terms of the MFMA or a condition imposed by the Act itself. The municipal Council therefore has no power in terms of the MFMA to condone any act of non-compliance in terms of the MFMA or any of its regulations. The treatment of expenditure associated with the non-compliance is therefore the responsibility of the *Council*.

8.2.3 There is no provision in the Local Government: Municipal Systems Act 32 of 2000 (MSA) that allows for a contravention of the Act to be condoned. Nevertheless, should a *municipality* wish to request that an act of non-compliance with any provision of the MSA be condoned, then the *Accounting Officer* should address the request to the Minister of Co-operative Governance and Traditional Affairs (COGTA), who is responsible for administering the MSA. The resultant expenditure should however be dealt with in terms of section 32(2) of the MFMA.



- 8.2.4 There is no provision to allow *irregular expenditure* resulting from a contravention of the Public Office-Bearers Act to be condoned. This is consistent with section 167(2) of the MFMA, which provides that such irregular expenditure cannot be written-off and must be recovered from the political office-bearer/s concerned.
- 8.2.5 *Council* may condone a contravention of the council approved Supply Chain Management (SCM) policy or a by-law giving effect to such policy, provided that the contravention, is not also a contravention of the MFMA or the SCM regulations, in which case only National Treasury can condone a contravention of the SCM regulations. Any such requests must be accompanied by a full motivation and submitted to the National Treasury for consideration.
- 8.2.6 Once the *Accounting Officer* or *Council* becomes aware of any allegation of *irregular expenditure*, such allegation may be referred to the *Municipality's* own Internal Audit Unit or any other appropriate investigative body (internally or externally) for investigation, to determine whether or not grounds exist for a charge of financial misconduct to be laid against the official / *political office bearer* liable for the expenditure.

### 8.3 **Ratification of minor breaches of the procurement process**

- 8.3.1 In terms of regulation 36(1)(b) of the Municipal Supply Chain Management Regulations, the supply chain policy of a *municipality* may allow the *Accounting Officer* to ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely technical in nature. Where a municipality's supply chain management policy does not include this provision the *Accounting Officer* cannot exercise this ratification power. It is important to note that the *Accounting Officer* can only rely on this provision if the official or committee who committed the breach had the delegated authority to perform the function in terms of the municipality's adopted System of Delegations, which must be consistent with the MFMA and its regulations. The process to deal with minor breaches of the SCM policy is contained in Circular 68 from National Treasury.

- 8.3.2 It is important to note that the *Accounting Officer* may only ratify a breach of process, and not the irregular expenditure itself, which means that the *expenditure* will still remain irregular. The responsibility to ratify the actual irregular expenditure vests with the *Council* and processes to deal with such matters are outlined in section 32(2) of the MFMA read together with Regulation 74 of the Municipal Budget and Reporting Regulations (MBRR).
- 8.3.3 All breaches of the *Municipality's* SCM policy will result in *irregular expenditure*, in the event that expenditure is incurred. The issue of whether the breach is minor or material relates to the nature of the breach and the intent of those responsible for the breach; not to the monetary value thereof.
- 8.3.4 In terms of regulation 36 of the SCM Regulations, the *Accounting Officer* is responsible for deciding whether a particular breach of procurement processes is minor or material. In exercising this discretion, the *Accounting Officer* must be guided by:
- a) the specific nature of the breach: is it simply technical in nature, not impacting in any significant way on the essential fairness, equity, transparency, competitiveness or cost effectiveness of the procurement process, as required in terms of Section 217 of the Constitution?
  - b) The circumstance surrounding the breach: are the circumstances justifiable or, at least, excusable?
  - c) the intent of those responsible for the breach: were they acting in good faith?
  - d) The financial implication as a result of the breach: what was the extent of the loss or benefit to the municipality?
- 8.3.5 The *Accounting Officer* would have to consider the merits of each breach of the procurement processes and take a decision as to whether it should be classified as a minor or material breach. Note that this category only covers breaches of procurement processes in the *Municipality's* SCM policy and not breaches of other legislation or regulations. It is important to emphasise that, in terms of regulation 36 of the SCM Regulations, only the *Accounting Officer* may consider the ratification of minor breaches of procurement processes that are purely of a technical nature.

- 8.3.6 It is important that the *Accounting Officer* implement appropriate processes in the *Municipality's* SCM policy to investigate the nature of the breach so that an informed decision on corrective action can be made. In the event that a breach falls outside the classification of a minor breach, the *Accounting Officer* cannot follow the remedy contained in regulation 36 (1) (b).
- 8.3.7 The MFMA and the SCM regulations do not specify what these processes should be, however, it is recommended that *Accounting Officer* investigate the nature of the breach through its Internal Audit Unit or any other structure he/she deems fit to support his/her decision.
- 8.3.8 The SCM regulation 36(2) specifies a separate process for reporting the ratification of minor breaches to *Council*, after they have been ratified by the *Accounting Officer*. The findings of any investigation must be reported to the *Accounting Officer* for consideration when making a decision in this regard. It is important to maintain documentary evidence for audit purposes.

#### 8.4 **Disciplinary charges for irregular expenditure**

- 8.4.1 If, after having followed a proper investigation, the *Council* concludes that the political office-bearer or official responsible for making, permitting or authorising *irregular expenditure* did not act in good faith, then the *Municipality* must consider instituting disciplinary action and/or criminal charges against the liable person/s.
- 8.4.2 If the *irregular expenditure* falls within the ambit of the above description, then the *Council*, *Mayor* or *Accounting Officer* (as may be relevant) must institute disciplinary action as follows:
- a) Financial misconduct in terms of section 171 of the MFMA: in the case of an official that deliberately or negligently:
    - (i) contravened a provision of the MFMA which resulted in irregular expenditure;
    - or
    - (ii) made, permitted or authorised an irregular expenditure (due to non-compliance with any of legislation mentioned in the definition of irregular expenditure);

- b) *Breach of the Code of Conduct for Municipal Staff Members*: in the case of an official whose actions in making, permitting or authorizing an irregular expenditure constitute a breach of the Code; and
- c) *Breach of the Code of Conduct for Councillors*: in the case of a political office-bearer, whose actions in making, permitting or authorizing an irregular expenditure constitute a breach of the Code. This would also include instances where a councillor knowingly voted in favour or agreed with a resolution before council that contravened legislation resulting in irregular expenditure when implemented, or where the political office-bearer improperly interfered in the management or administration of the *municipality*.

8.4.3 The code of conduct forms part of the Municipal Systems Act (MSA). Any breach of the code of conduct that relates to supply chain is a breach of the MSA and therefore results to irregular expenditure.

## 8.5 **Criminal charges arising from an act of irregular expenditure**

8.5.1 If, after following a proper investigation, the *Council* concludes that the official or political office-bearer responsible for making, permitting or authorising an instance of *irregular expenditure* acted deliberately or negligently, then the *Council* must institute disciplinary procedures and lay criminal charges against the liable official or political office-bearer.

8.5.2 The irregular expenditure must be considered in terms of section 173 of the MFMA, as well the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (No. 37699 dated 30 May 2014).

## 8.6 **Recovery of irregular expenditure**

8.6.1 All instances of irregular expenditure must be recovered from the liable official or political office-bearer, unless the expenditure is certified by the *Council*, after investigation by a *Council* committee, as irrecoverable and is written off by the *Council*.

- 8.6.2 *Irregular expenditure* resulting from breach of the Remuneration of Public Office-Bearers Act is an exception in that the *irregular expenditure* **must** be recovered from the political office-bearer/s to whom it was paid, who might not have been responsible for making, permitting or authorising the *irregular expenditure*.
- 8.6.3 Once it has been established who is liable for the *irregular expenditure*, the *Accounting Officer* must, in writing, request that the liable political office-bearer or official pay the amount within 30 days or in reasonable instalments. If the person fails to comply with the request, the matter must be recovered through the normal debt collection process of the *Municipality*.

## 9. FRUITLESS AND WASTEFUL EXPENDITURE<sup>3</sup>

### 9.1. Principles on Fruitless and Wasteful Expenditure

- 9.1.1 *Fruitless and wasteful expenditure* is expenditure that was made in vain and would have been avoided had reasonable care been exercised (e.g. payment of penalty interest due to late payment of an account that should have been settled within the require time).
- 9.1.2 *Fruitless and Wasteful expenditure* most of the time emanates from an action instigated by an official that resulted in a financial loss to the institution.
- 9.1.3 *Fruitless and wasteful expenditure* can arise from a range of events, activities and actions from a simple oversight in performing an administrative task to a deliberate and/or an intentional transgression of relevant laws and regulations.
- 9.1.4 The most logical approach to address or assess whether or not expenditure can be classified as *fruitless and wasteful expenditure* is to ask a few elementary questions such as the following: -

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<sup>3</sup> NB: In order for any expenditure to be classified as fruitless and wasteful expenditure as defined under section 1 of this Policy, it must have already been incurred by the municipality (i.e. the money has left the bank account of the municipality).

**a) Did the intended spending relate to the formal powers of the municipality?**

A *municipality* may perform only those functions and powers conferred to it by the Constitution of the Republic of South Africa Act 108 of 1996 and relevant legislation. Any expenditure incurred relating to an act or conduct exercised outside those functions and powers may result in *fruitless and wasteful expenditure* notwithstanding sufficient provision has been made on the budget and correct procedures were followed in incurring the expenditure.

**b) Would the expenditure further the interest of the municipality?**

The expenditure incurred to obtain a service, inventory and asset or to render a service, and so forth, must have been necessary and ideally unavoidable to enable the *Municipality* to exercise its functions and powers in accordance with the relevant legislation.

**c) Was it essential to incur the intended expenditure?**

It is of paramount importance to incur expenditure only when it is really necessary or essential for purposes as mentioned above. One should be satisfied that non-incurrence of such expenditure will have a negative impact on the lawful activities of the *Municipality*.

**d) Was any other option perhaps available to prevent the intended expenditure or to reduce it?**

This question overlaps to some extent with question above but it is more specific in the sense that it puts pressure on the *Municipality* to apply its mind and to consider all possible options. Should it appear after the expenditure has been incurred that a more effective and perhaps a less expensive option was at the disposal of the *Municipality* but that it was ignored or disregarded without good cause the expense will be regarded as fruitless and wasteful.

**10. DEALING WITH IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE**

10.1 Any official who becomes aware of or suspects the occurrence of *irregular - or fruitless and wasteful expenditure* should promptly report in writing, the particulars

of such expenditure which are within his or her knowledge, to the *Accounting Officer* or his or her delegate;

- 10.2 Once the *Accounting Officer* or his or her delegate has received the report alleging the occurrence of *irregular - or fruitless and wasteful expenditure*, the details of such expenditure must be recorded in a register for irregular or fruitless and wasteful expenditure. **(Refer “Annexure A”)**;
- 10.3 The *Accounting Officer* or his or her delegate (or preferred structure deemed fit to deal with the matter) should investigate the alleged *irregular - or fruitless and wasteful expenditure* to determine whether the expenditure meets the definition of irregular or *fruitless and wasteful expenditure*;
- 10.4 For accounting records purposes, during the investigation, the expenditure must remain in the expense account i.e. the *vote* of the department within the *Municipality* against which the expenditure was incurred;
- 10.5 The results of the investigation will determine the appropriate action to be taken regarding such expenditure. Should the investigation reveal that the expenditure is not irregular - or *fruitless and wasteful* as defined, the details of the expenditure should be retained in the register for record purposes and to provide a full audit trail. The register must be updated to reflect the outcome of the investigation; and
- 10.6 Should the investigation reveal that the expenditure is irregular - or *fruitless and wasteful* as defined above, the *Accounting Officer* must promptly report, in writing, the particulars of such expenditure to the *Mayor, MEC for Local Government and the Auditor General*. The register must be updated to reflect the outcome of the investigation.

## **11. ROLE OF COUNCIL COMMITTEES**

- 11.1 In terms of regulation 74 the Municipal Budget and Reporting Regulations contained in Government Notice 393 of 17 April, 2009, a council committee appointed to investigate the recoverability or otherwise of any *unauthorised, irregular or fruitless and wasteful expenditure* must consider –
- a) the measures already taken to recover such expenditure;
  - b) the cost of the measures already taken to recover such expenditure;
  - c) the estimated cost and likely benefit of further measures that can be taken to recover such expenditure; and
  - d) submit a motivation explaining its recommendation to the Council for a final decision.
- 11.2 The *Accounting Officer* (or his / her delegate) must provide the committee concerned with such information it may require for the purpose of conducting a proper investigation.
- 11.3 It should be noted that the *Council* is required by resolution to certify that the expenditure concerned is considered irrecoverable, upon conclusion of investigation, and that it should be written off and importantly to note is that this power may not be delegated by the *Council*.
- 11.4 An audit committee established in terms of section 166 of the MFMA is not precluded from assisting the appointed committee with its deliberations.

## **12. INVESTIGATION AND DISCIPLINARY ACTIONS**

- 12.1 In terms of sections 172 and 173 of the MFMA, an *Accounting Officer* is guilty of financial misconduct and an offence respectively if he or she:



- a) wilfully or negligently fails to take effective and appropriate steps to prevent *unauthorised-, irregular- or fruitless and wasteful expenditure* as required by the MFMA;
  - b) fails to take effective and appropriate disciplinary steps against an official who makes or permits *unauthorised, irregular- or fruitless- and wasteful expenditure*; and
  - c) fails to report *unauthorised-, irregular- or fruitless and wasteful expenditure*.
- 12.2 As soon as the *Accounting Officer* becomes aware of an allegation of financial misconduct against any official, the *Accounting Officer* has a responsibility to ensure that an investigation is initiated into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts of the applicable legislation.
- 12.3 In terms of section 172 of the MFMA, an official of a department to whom a duty or power has been assigned, commits an act of financial misconduct if that official wilfully or negligently fails to perform that duty or exercise that power in line with applicable legislation.
- 12.4 In terms of the MFMA, the *Accounting Officer* must take appropriate and effective disciplinary steps against an official who makes or permits *unauthorised-, irregular- or fruitless and wasteful expenditure*.
- 12.5 When an *Accounting Officer* determines the appropriateness of disciplinary steps against an official in terms of applicable legislation, he or she must take into account the following:
- a) circumstances of the transgression;
  - b) extent of the expenditure involved; and
  - c) nature and seriousness of the transgression.

## 12.6 Disciplinary charges for Irregular or Fruitless and Wasteful Expenditure

12.6.1 If, after having followed a proper investigation, the *Council* concludes that the political office-bearer or official responsible for making, permitting or authorising irregular expenditure did not act in good faith, then the *Municipality* must consider instituting disciplinary action and/or criminal charges against the liable person/s. If the *irregular expenditure* falls within the ambit of the above description, then the Council, *Mayor* or *Accounting Officer* (as may be relevant) must institute disciplinary action as follows:

- a) *Financial misconduct in terms of section 171 of the MFMA*: in the case of an official that deliberately or negligently:
  - (i) contravened a provision of the MFMA which resulted in *irregular expenditure*;  
or
  - (ii) made, permitted or authorised an *irregular expenditure* (due to non-compliance with any of legislation mentioned in the definition of *irregular expenditure*).
- b) Breach of the *Code of Conduct for Municipal Staff Members*: in the case of an official whose actions in making, permitting or authorizing an *irregular expenditure* constitute a breach of the Code; and
- c) Breach of the *Code of Conduct for Councillors*: in the case of a political office-bearer, whose actions in making, permitting or authorizing an *irregular expenditure* constitute a breach of the Code. This would also include instances where a Councillor **knowingly** voted in favour or agreed with a resolution before *Council* that contravened legislation resulting in *irregular expenditure* when implemented, or where the political office-bearer improperly interfered in the management or administration of the *Municipality*.

12.7 Criminal charges arising from an act of *Irregular or Fruitless and Wasteful expenditure*

- a) If, after following a proper investigation, the *Council* concludes that the official or political office-bearer responsible for making, permitting or authorising an

instance of irregular expenditure acted deliberately or negligently, then the *Council / Accounting Officer* must institute disciplinary procedures and lay criminal charges against the liable official or political office-bearer, in line with the applicable Regulations / Legislation.

- b) If the irregular expenditure was the result of a breach of the definition of irregular expenditure, it must be considered in terms of section 173 of the MFMA or applicable Regulations.

12.8 As alluded to previously, it is also critically important that the Municipal Regulations on Financial Misconduct (dated 30 May 2014 Government Gazette number 37682) be taken into account when dealing with disciplinary matters relating to alleged financial misconduct.

12.9 Where an official or Councillor - who has already left Council - incurred irregular expenditure but it can be proven that the expenditure was incurred in good faith, this expenditure is to be written off by *Council*, however, in the event that it is determined that the transgressions resulted from criminal activities, other appropriate actions may be taken by the *Council or Accounting Officer* depending on the individual case.

### **13. REPORTING**

13.1 The *Accounting Officer* must report the details of the *unauthorised, irregular or fruitless, and wasteful expenditure* to the Mayor. The report may include inter alia the following details:

- a) amount of the *unauthorised-, irregular- or fruitless and wasteful expenditure*;
- b) name of the *vote* (Directorate or Cost Centre) from which the expenditure was made;
- c) reason why the *unauthorised-, irregular- or fruitless and wasteful expenditure* could not be avoided;
- d) name and title of the responsible official;

- e) details of any recovery steps to date taken or to be taken by the *Municipality*;  
and
  - f) details of any disciplinary steps taken to date or to be taken by the *Municipality*.
- 13.2 All *unauthorised-, irregular- or fruitless and wasteful expenditure* must be reported as a note to the Annual Financial Statements, whilst they have not yet been referred to the relevant Council structure that will advise Council on how to deal with the matter.
- 13.3 The *Accounting Officer* must record the reasons for any deviations in terms of SCM regulations and report to the next *Council* meeting and disclose this expenditure in a note to the Annual Financial Statements.
- 14. REGULAR REVIEW OF THE UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTE EXPENDITURE REGISTER**
- 14.1 The *unauthorised-, irregular- or fruitless and wasteful expenditure* register should be reviewed on a regular basis by the Chief Financial Officer (CFO) or his / her delegate. This review will ensure that *unauthorised-, irregular- or fruitless and wasteful expenditure* are adequately disclosed in the Annual Financial Statements, dealt with, and recorded and that no mathematical errors exist, prior being referred to the relevant or proper Council structure for appropriate investigation and advice.
- 15. ACCOUNTING TREATMENT OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE**
- 15.1 *Unauthorised-, irregular- or fruitless and wasteful expenditure* identified during a financial year, but not dealt with in that specific financial year must be disclosed in the financial year it occurred.

- 15.2 The cumulative *unauthorised-, irregular- or fruitless and wasteful expenditure* incurred at financial year end should be adequately and appropriately disclosed in the annual financial statements, more especially if the expenditure has not yet been referred to the relevant Committee / structure of Council appointed to deal with these types of expenditure.
- 15.3 The aim must always be to ensure that any expenditure that has been identified or categorised as either “unauthorised, irregular, fruitless and wasteful” in a particular financial year must be reported to the structure established by Council to deal with those matters, during that financial year and the note to the annual financial statements must make a disclosure of the full amount referred to the said Committee for further investigation and advice to full Council. This is to ensure that the legal process required to deal with these matters is clearly differentiated from the requirement for the annual financial statement’s disclosures as the legal process may take long and tedious time to conclude.
- 15.4 Recognition and measurement of unauthorised, irregular or fruitless and wasteful expenditure must be treated in terms of the latest available guidelines, “if applicable” for the compilation of the Annual Financial Statements issued to municipalities by National Treasury on an annual basis and be in line with the latest GRAP requirements.

**16. THE LEGAL STANDING OF AMOUNTS WRITTEN OFF BY COUNCIL AS UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL IN CASES OF FUTURE INVESTIGATIONS OR CHARGES TO AFFECTED PARTIES**

- 16.1 Section 32(5) of the MFMA states inter-alia that “The writing off of any *unauthorised-, irregular-, fruitless and wasteful expenditure* as irrecoverable, is not excuse in criminal or disciplinary proceedings against a person charged with the commission of an offence or a breach of the MFMA relating to such unauthorised, irregular, fruitless and wasteful expenditure”. This must allay any fear that if Council

authorised a write-off of expenditure of this nature, such action may equate to the matter not further pursued appropriately, in the event of new evidence being uncovered in the future.

- 16.2 Section 32(6) of the MFMA further states that “The Accounting Officer must report to the South African Police Service (SAPS) all cases of alleged (a) irregular expenditure that constitute a criminal offence, or (b) theft and fraud that occurred in the municipality.

## **17. DEALING WITH “LIMITATION OF SCOPE” EXPENDITURE**

- 17.1 *Limitation of Scope* is defined “as a restriction on an audit that is caused by the client, due to issues that “*may be*” beyond the control of the client, or other events that do not allow the auditor to complete all aspects of his or her audit procedures”. If, for an example the floor or offices that contain important information, (SCM / Tender files) are destroyed / gutted by fire, the audit process will be subjected to a *Limitation of Scope* as the original files required for the audit may not be retrieved due to this unfortunate event.
- 17.2 Depending on the seriousness of the *Limitation of Scope* as identified by the Auditor General South Africa (AGSA), the municipality may be issued with either a qualified audit opinion, disclaimer opinion, or adverse opinion.
- 17.3 The Limitation of Scope expenditure is not dealt with in the MFMA or SCM Regulations or any applicable municipal legislation. It is therefore recommended, in terms of this Policy, that in instances where the limitation of scope expenditure cannot be provided with the required or sufficient information, such expenditure be referred by the Chief Financial Officer to the relevant Council, in writing (or as a report or item thereto), for an authority to write-off upon approval by Council.

17.4 The Limitation of Scope Expenditure must be disclosed, separately, in the notes of the annual financial statements until Council approves it to be written off in a similar manner as other UIF&W Expenditure and Council or its structure may also request that, where required, consequence management processes be followed.

## **18. OPERATIONALISING THE POLICY**

18.1 The *Accounting Officer* may set up relevant Committee/s that may include officials from, but not limited to the (i) Internal Audit Unit, (ii) Office of the City Manager, (iii) Office of the Chief Operating Officer, (iv) Budget and Treasury Directorate, and any relevant stakeholder (internally or externally) (e.g. Technical Section 32 Committee, etc.) in order to operationalise this policy administratively.

18.2 This policy will be effective from date of adoption by Council and supersedes any previous policies adopted by Council.

## **19. POLICY REVIEW**

19.1 This policy will be reviewed on an as and when required basis, such as cases when new Circulars or Regulations are issued by National Treasury or any sphere of government, or other legal prescripts that may be amended, impacting / affecting the contents of this Policy.

19.2 Policy reviews will be undertaken over a three year cycle.

