

Ubuntu Municipality



*menswaardigheid - hoop - erfenis
ubuntu - ithemba - izithethe
humanity - hope - heritage*

DRAFT
UNAUTHORISED, IRREGULAR OR
FRUITLESS AND WASTEFUL
EXPENDITURE POLICY
2024/2025

APPROVED BY COUNCIL ON (DATE): _____

COUNCIL RESOLUTION NR: _____

IMPLEMENTATION DATE: _____

CONTENTS

1.	BACKGROUND.....	4
2.	OBJECTIVE	4
3.	DEFINITIONS	5
4.	REGULATORY FRAMEWORK	7
5.	SCOPE OF APPLICATION	7
6.	RELATIONSHIPS WITH OTHER POLICIES	8
7.	ROLES AND RESPONSIBILITY	8
8.	PRINCIPLES OF UNATHORISED EXPENDITURE	8
9.	PROCESS DEALING WITH UNAUTHORISED EXPENDITURE	9
10.	AUTHORISING UNAUTHORISED EXPENDITURE	10
11.	RECOVERY OF UNAUTHORISED EXPENDITURE	11
12.	PRINCIPLES ON IRREGULAR EXPENDITURE	12
13.	RATIFICATION OF MINOR BREACHES OF THE PROCUREMENT PROCESS.....	14
14.	DISCIPLINARY AND CRIMINAL CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	14
15.	RECOVERY OF IRREGULAR EXPENDITURE	15
16.	FRUITLESS AND WASTEFUL EXPENDITURE	16
17.	REGISTER OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	17
18.	ROLE OF COUNCIL COMMITTEE.....	17
19.	REPORTING.....	18

20. REGULAR REVIEW OF THE UNAUTHORISED IRREGULAR, OR FRUITLESS AND WASTEFUL EXPENDITURE REGISTER	18
21. PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UIF&W 19	
22. ACCOUNTING TREATMENT OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE	19
23. DISCLOSURE OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE	19
24. IMPORTANT POINTS TO CONSIDER	20

1. BACKGROUND

The purpose of this policy is to define and regulate unauthorised, irregular or fruitless and wasteful expenditure.

The aim is to:

- I. prevent unauthorised, irregular or fruitless and wasteful expenditure;
- II. to identify and investigate unauthorised, irregular or fruitless and wasteful expenditure;
- III. to respond appropriately in accordance with the law and to address instances of unauthorised, irregular or fruitless and wasteful expenditure conclusively.

In terms of section 4(2)(a) of the Municipal Systems Act (MSA) the council has a duty to use the resources of the municipality in the best interest of the local community. This duty is extended to individual councillors through the Code of Conduct for Councillors, which states that a councillor must:

- i. “perform the functions of office in good faith, honestly and in a transparent manner, and
- ii. at all times act in the best interests of the community and in such a way that the credibility and integrity of the municipality are not compromised.”

2. OBJECTIVE

The objectives of this policy include amongst other things:

- (a) Emphasising the accountability of employees;
- (b) Ensuring that employees have a clear and comprehensive understanding of the procedures they must follow when dealing with unauthorised, irregular or fruitless and wasteful expenditure;
- (c) Ensuring that resources made available to employees are utilised efficiently, effectively, economically and for authorised official purposes;
- (d) Ensuring that the Municipality’s resources are managed in compliance with the MFMA, the Municipal Budget and Reporting Regulations and other relevant legislation; and
- (e) Ensure that irregular, unauthorised or fruitless and wasteful expenditure is detected, processed, recorded, and reported timeously.

3. DEFINITIONS

“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 transaction;

“Councillor” means member of municipal council of Ubuntu Local Municipality.

“fruitless and wasteful expenditure” 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.

“Financial Misconduct” means any misappropriation, mismanagement, waste or theft of the finances of a municipality, and also includes any form of financial misconduct specifically set out in sections 171 and 172 of the Act.

“Official”, in relation to Ubuntu Local Municipality, means:

- a) an employee of Ubuntu Local Municipality;
- b) a person seconded to Ubuntu Local Municipality or to work as a member of the staff of the Ubuntu Local Municipality;
or
- c) a person contracted by Ubuntu Local Municipality to work as a member of the staff of the Ubuntu Local Municipality or otherwise than as an employee.

“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

“Senior Manager” has the meaning assigned to it in section 1 of the MFMA and in relation to Ubuntu Local Municipality’s refers to Executive Managers including the CFO.

“irregular expenditure”, 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 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".

"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.

"unauthorised expenditure", 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” 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.

4. REGULATORY FRAMEWORK

The following Laws and regulations, amongst others, inform this policy:

- (a) The Constitution of the Republic of South Africa
- (b) Section 32 of the MFMA
- (c) Sections 170 and 173 of the MFMA
- (d) Regulations 23 and 74 of the Municipal Budget and Reporting Regulations
- (e) Relevant GRAP statements
- (f) MFMA Circular 68 of March 2019
- (g) Public Audit Amendment Act 5 of 2018 Section 5A and 5B
- (h) The Remuneration of Public Office Bearers Act
- (i) The Municipal Structures Act of No 117 of 1998,
- (j) NCPT Instruction Note 1 of 2017, and
- (k) Any other legislation, regulation or circular that might impact this policy

5. SCOPE OF APPLICATION

- I. From a responsibility perspective, this policy is relevant to all employees of the Municipality, whether full-time or part-time and Public Office Bearers.
- II. In particular, the duly appointed Directorate and responsibility managers have significant roles in:
 - a) Identifying the identity of the person who is liable for unauthorised, irregular or fruitless and wasteful expenditure.
 - b) Deciding on how to recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure.
 - c) Determining the amount of unauthorised, irregular or fruitless and wasteful expenditure to be recovered, written off or provided for.

6. RELATIONSHIPS WITH OTHER POLICIES

The unauthorised, irregular, or fruitless and wasteful expenditure policy has additional parts that cover the unique nature of the broad spectrum of expenditure generated by municipality. These policies are to be managed by all the executive managers. The following parts exist:

- (a) System of Delegations
- (b) SCM policy
- (c) Debit Collection and Credit policy
- (d) Debt writing off policy
- (e) Budgets and Medium Term Revenue and Expenditure Framework (MTREF)
 - i. Breach of the Code of Conduct for Municipal Staff Members; and
 - ii. Breach of the Code of Conduct for Councillors;
 - iii. Policy on financial misconduct.

7. ROLES AND RESPONSIBILITY

The MFMA outlines the responsibilities of the Accounting Officers, which include amongst others:

- (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 mayor.
- (d) The MFMA further prescribe the process that must be followed to deal with irregular, unauthorised, fruitless, and wasteful expenditure.

8. PRINCIPLES OF UNATHORISED EXPENDITURE

- 8.1 Ubuntu Municipality may incur expenditure only in terms of an approved budget and within the limits of the amounts appropriated for the different votes in an approved budget.
- 8.2 Expenditure incurred within the ambit of Ubuntu Local Municipality's virement policy is not regarded as unauthorised expenditure.
- 8.3 Any expenditure that has not been budgeted for, expenditure that is not in terms of the conditions of an allocation received from another sphere of government, economic entity

or organ of state and expenditure in the form of a grant that is not permitted in terms of the MFMA is regarded as unauthorised expenditure.

8.4 Unauthorised expenditure would include:

- a) Any overspending in relation to both the operational budget and capital budget of the municipality;
- b) Overspending in relation to each of the votes on both the operational budget and capital budget;
- c) Use funds allocated to one department for purposes of another department or for purposes that are not provided for in the budget;
- d) Funds that have been designated for a specific purpose or project within a departments vote may not be used for any other purpose;
- e) Any use of conditional grant funds for a purpose other than that specified in the relevant conditional grant framework is classified as unauthorised expenditure;
- f) Any grant to an individual or household unless it is in terms of the municipality's indigent policy, bursary scheme, corporate social responsibility policy, councillors discretionary grant or the grants-in-aid;
- g) Unforeseen and unavoidable expenditure not authorised within an adjustments budget within 60 days after the expenditure was incurred; and
- h) Any overspending on non-cash items, for example depreciation, impairments, provisions.

9. PROCESS DEALING WITH UNAUTHORISED EXPENDITURE

- (a) Any employee who becomes aware of, or suspects the occurrence of unauthorised expenditure must immediately report, in writing, such expenditure to the Accounting Officer or his/her delegate.
- (b) 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 delegate should record the details of the expenditure in an unauthorised expenditure register.
- (c) The accounting officer or his/her delegate must investigate the alleged unauthorised expenditure to determine whether the expenditure meets the definition of unauthorised expenditure.
- (d) 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.
- (e) 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.

- (f) If the investigation indicates that the expenditure is in fact unauthorised expenditure the Accounting Officer must immediately report, in writing, the particulars of the expenditure to the mayor.
- (g) If council subsequently condones the unauthorised expenditure, the municipality requires no further action as the amount has already been expensed in the statement of financial performance. The register should be updated to reflect the fact that the unauthorised expenditure was condoned.
- (h) If however, the council does not condone the amount, the accounting officer must take effective and appropriate action to recover the amount from the responsible person.

10. AUTHORISING UNAUTHORISED EXPENDITURE

In considering authorisation of unauthorised expenditure, council must consider 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 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) 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;
 - the mayor, accounting officer or official was acting in good faith when making and permitting unauthorised expenditure; and
 - the municipality has not suffered any material loss as a result of the action.

In these instances, the council should authorise the unauthorised expenditure. . Depending on the responses received in relation to each question, municipal councils are advised to also include the element of consequence management as part of the above consideration. In this regard, municipalities are referred to the

Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings in assessing whether or not acts of financial misconduct were committed.

Adjustments budgets to authorise unauthorised expenditure:

Council may only authorise unauthorised expenditure in an adjustments budget. This can be addressed in three different adjustments budgets as follows:

- (a) **Adjustments budget for unforeseen and unavoidable expenditure:** 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 the “first available opportunity” or within the 60 days after the expenditure was made. 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 budgets process described below.
- (b) **Main adjustments budget:** 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 the council, but not later than 28 February of the current year”. Where unauthorised expenditure from this period is not identified or investigated in time to include in this adjustments budget, it must be held over to the following adjustments budget process noted below.
- (c) **Special adjustments budget to authorise unauthorised expenditure:** Council may authorise unauthorised expenditure in a special adjustments budget tabled in council when the mayor tables the annual report. These 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 Act.”
- (d) When disclosing unauthorised expenditure in the annual financial statements, municipalities should distinguish between unauthorised expenditure relating to cash and non-cash items.

11. RECOVERY OF UNAUTHORISED EXPENDITURE

- (a) All instances of unauthorised expenditure must be recovered from the liable official or political office-bearer, unless the unauthorised expenditure has been certified as irrecoverable by the council after investigation by a council committee in terms of section 32(2)(a)(ii) of the MFMA
- (b) The Accounting Officer (or his/her delegate) must determine who the responsible party is from whom the amount should be recovered. This information would normally become evident while performing the investigation.

- (c) The Accounting Officer (or his/her delegate) must in writing request that 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 division for the recovery of the debt through normal debt collection process. Municipalities and municipal entities are must incorporate consequence management processes as part of the expenditure recovery assessment. Whenever unauthorized expenditure is incurred and it is referred to the council committee for investigation the committee must also assess whether or not the action or failure to act by any official constitute financial misconduct as defined in sections 171 and 172 of the MFMA and make appropriate recommendations to council for further action in terms of chapter 15 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

12. PRINCIPLES ON IRREGULAR EXPENDITURE

Irregular expenditure is expenditure that is contrary to the Municipal Finance Management Act (Act No. 56 of 2003), the Municipal Systems Act (Act No. 32 of 2000), the Remuneration of Public Office Bearers Act (Act No. 20 of 1998) or is in contravention of the municipality's supply chain management policy or system of delegation.

Categories of irregular expenditure

- a) Irregular Expenditure incurred as a result of a non-compliance with the MFMA , Municipal Systems Act, Public Office Bearers Act, 1998(Act 20 of 19198) and the «M_1» municipal Supply Chain Management Policy and any other municipal By-Laws giving effect to such policy
- b) 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 quotations.

- c) Irregular Expenditure resulting from non-adherence to the delegation of authority as approved.
- d) Irregular Expenditure incurred as a result of expenditure outside contracts or contracts expired and not extended in terms of MFMA section 116.
- e) Expenditure resulting from non-adherence to an institution's delegation of authority is also regarded as irregular expenditure.
- f) Although a transaction or an event may trigger irregular expenditure, a Council will only identify irregular expenditure when a payment is made or when the invoice is received in terms of GRAP 1. The recognition of irregular expenditure must be linked to a financial transaction.

Procedures for dealing with irregular expenditure

Once the Accounting Officer or Council becomes aware of any allegation of irregular expenditure, such allegation may be referred to the municipality's disciplinary board or any other appropriate investigative body for investigation, to determine whether grounds exist for a charge of financial misconduct to be laid against the official liable for the expenditure. Further guidance on the processes to follow:

- a) Investigating allegations of financial misconduct can be found in the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings read with MFMA Circular 76
- b) In terms of section 32(2)(b), irregular expenditure may only be written-off by Council if, after an investigation by a council committee, the irregular expenditure is certified as irrecoverable. 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.
- c) Condonation for non-compliance to legislation should be motivated and adequately documented and addressed to the relevant authority. For non-compliance with MFMA, condonation should be requested from National Treasury. For non-compliance with MSA approval for condonation should be requested from Minister of Cooperative Governance and Traditional Affairs. There is no provision to allow irregular expenditure resulting from a contravention of the Public Office-Bearers Act to be condoned. Such irregular expenditure should be recovered from the political office bearer.

- d) The council cannot condone non-compliance to any legislation which includes the MFMA, MSA and Public Office bearers Act. Council may condone non-compliance to council approved SCM Policy of enabling By-Laws provided they do not contravene any legislation.

13. RATIFICATION OF MINOR BREACHES OF THE PROCUREMENT PROCESS

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.

In terms of regulation 36 of the supply chain management, 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?
- b. The circumstance surrounding the breach: are the circumstances justifiable?
- 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?

14. DISCIPLINARY AND CRIMINAL CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

- 14.1. After having followed a proper investigation, the council concludes that the political office-bearer or official responsible for making, permitting or authorising unauthorised, irregular, fruitless and wasteful expenditure did not act in good faith or committed an act of financial misconduct, then the municipality must consider instituting disciplinary action and criminal charges against the liable person/s in terms of chapter 15 of the MFMA read with the municipal regulations on financial misconduct procedures and criminal proceedings
- 14.2. The following must be used to institute disciplinary action and criminal charges;

- a) Financial Misconduct in terms of section 171 of the MFMA read with the municipal regulations on financial misconduct procedures and criminal proceedings
- b) Breach of the code of conduct for municipal staff members
- c) Breach of the code of conduct for councillors

15. RECOVERY OF IRREGULAR EXPENDITURE

- 15.1 Notwithstanding the disciplinary process, the accounting officer must identify the official who is responsible for the unauthorised -, irregular or fruitless and wasteful expenditure.
- 15.2 The relevant information would normally be evident from the investigation process.
- 15.3 The amount of the expenditure should be recovered from the official concerned by taking the following steps:
- (a) The accounting officer must write to the official concerned and request him or her to pay the amount within 30 days or in reasonable instalments.
 - (b) Reasonable instalments will vary from case to case depending on such factors as the total amount involved and the affordability level of the official concerned.
 - (c) The accounting officer is expected to apply his or her discretion judiciously.
 - (d) The municipality can also institute measures to recover money's paid from suppliers of assets, goods or services not received, as may be appropriate.
- 15.4 If the person fails to comply with the request, the matter must be recovered through the normal debt collection process of the municipality.
- 15.5 All instances of irregular expenditure must be recovered from the liable official or political office-bearer, unless the expenditure is certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council in terms of section 32(2)(b) of the MFMA.
- 15.6 Irregular expenditure resulting from breaches of the Public Office-Bearers Act is an exception in that the irregular expenditure must be recovered from the political office bearer to whom it was paid, who might not have been responsible for making, permitting or authorising the irregular expenditure.
- 15.7 The municipality can also institute measures to recover money's paid from suppliers of assets, goods or services not received, as may be appropriate
- 15.8 Municipalities and municipal entities must take note of the Public Audit Amendment Act, Act 5 of 2018, and regulations issued, which amongst others, provides for the Auditor-General to issue a certificate of debt where an accounting officer or accounting authority has failed to recover losses from a responsible person and to instruct the relevant executive authority to collect the debt

16. FRUITLESS AND WASTEFUL EXPENDITURE

No particular expenditure is explicitly identified by the MFMA as fruitless and wasteful.

Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised.

Fruitless and Wasteful expenditure will always emanate from an action instigated by an official that resulted in a financial loss to the institution.

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.

It seems that the most logical approach to address assess whether or not an expenditure can be classified, as fruitless and wasteful expenditure is to ask a few elementary questions prior to the spending of municipal funds such as:

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

Municipality may perform only those functions and powers conferred to it by the constitution and relevant legislation. Any expenditure incurred relating to an act or conduct exercised outside those functions and powers will 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, etc 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 put 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.

The processes to respond appropriately to fruitless and wasteful expenditure are similar to the following three processes outlined for irregular expenditure:

- (i) disciplinary charges against officials and political office bearers;
- (ii) criminal charges against officials and political office-bearers; and
- (iii) recovery of the fruitless and wasteful expenditure from the liable persons.

Fruitless and wasteful expenditure can arise in any circumstance and is not dependent on non-compliance with any legislation.

Council should follow section 32(2) (b) of the MFMA when dealing with instances of fruitless and wasteful expenditure.

17. REGISTER OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

17.1 All instances of unauthorised, irregular, fruitless and wasteful expenditures must be reported to the mayor, the MEC for Finance and Local Government in the province, the auditor-general, disclosed in the annual report, and to council.

17.2 As part of complying with sections 62(1) (d) and 95(d) of the MFMA, accounting officers (who may delegate the task to the chief financial officer) must set-up and maintain a Register of Unauthorised, Irregular, Fruitless and Wasteful Expenditures.

18. ROLE OF COUNCIL COMMITTEE

18.1 In terms of section 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.

18.2 The accounting officer must provide the committee concerned with such information it may require for the purpose of conducting a proper investigation.

18.3 The aforesaid committee may only comprise councillors and should not include officials of the municipality. At least three councillors are required to constitute a committee.

18.4 It should be noted that the council is required by resolution to certify that the expenditure concerned is considered irrecoverable and that it should be written off. This power may not be delegated by the council.

18.5 An audit committee established in terms of section 166 of the Act is not precluded from assisting the appointed committee with its deliberations.

19. REPORTING

19.1 The accounting officer must comply with the following reporting requirements: attached as "Annexure B";

19.2 Immediately upon discovery of unauthorised, irregular or fruitless, and wasteful expenditure, the accounting officer must report the details of the unauthorised, irregular or fruitless, and wasteful expenditure to the Mayor, MEC for Finance and the Auditor-General. The report must include the following details:

- (a) amount of the unauthorised, irregular or fruitless and wasteful expenditure;
- (b) name of the vote 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 taken or to be taken by the municipality; and
- (f) details of any disciplinary steps taken or to be taken by the municipality.

19.3 The accounting officer must also include the expenditure in the relevant department's monthly revenue and expenditure report submitted to the Council in terms of the MFMA;

19.4 All unauthorised, irregular or fruitless and wasteful expenditure must be reported as a note to the annual financial statements.

19.5 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.

20. REGULAR REVIEW OF THE UNAUTHORISED IRREGULAR, OR FRUITLESS AND WASTEFUL EXPENDITURE REGISTER

The unauthorised, irregular or fruitless and wasteful expenditure register should be reviewed on a monthly basis by the chief financial officer of the municipality. This review will ensure that unauthorised -, irregular or fruitless and wasteful expenditure are adequately disclosed, dealt with, recorded and that no mathematical errors exists.

- a) A separate register must be maintained by the MM for expenditure incurred by CFO;
- b) A separate register must be maintained by the Mayor for expenditure incurred by the MM; and
- c) The Speaker will maintain a register for expenditure incurred by the Mayor and Councillors.

21. PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UIF&W

- 21.1 If any official or councillor who has complied with this policy and as a result thereof has been subjected to intimidation, victimisation, threats such official or councillor should immediately report such threats, victimisation or intimidation immediately to the MM or the Mayor where applicable.
- 21.2 The Municipal Manager or Mayor must immediately take appropriate action to ensure that protection of the official or councillor after receiving the above report.
- 21.3 Where the nature of the threats warrants such action, the threats should be reported to the SAPS by the official concerned, the MM or the Mayor, where applicable.

22. ACCOUNTING TREATMENT OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE

- (a) Unauthorised, irregular or fruitless and wasteful expenditure identified during one financial period, but not paid in the specific period should be recorded in the following financial year.
- (b) The cumulative unauthorised, irregular or fruitless and wasteful expenditure incurred at financial year end should be adequately and appropriately disclosed in the financial statements of the municipality.
- (c) Recognition and measurement of unauthorised, irregular or fruitless and wasteful expenditure shall be treated in terms of the latest available guidelines 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.

23. DISCLOSURE OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE

- (a) The municipality must quantify the total amount of irregular expenditure unless it is impractical to do so. In terms of GRAP3, applying a requirement as impracticable is when the municipality cannot apply it after making every

reasonable effort to do so. Insufficient time cannot be used as a justification for impracticability.

- (a) The municipality's exercise of quantifying the irregular expenditure must focus on the year under review. However, if the non-compliance was identified on a multi-year contract that was identified in prior years, the irregular expenditure on that specific contract must be quantified from inception of the contract
- (b) A municipality may only disclose impracticability after making every reasonable effort to quantify the full extent of the irregular expenditure
- (c) MFMA section 125(2) require accounting officers and accounting authorities to disclose in the notes to the Annual Financial Statements of the municipality particulars of any material unauthorised, irregular or fruitless and wasteful expenditure incurred during the financial year and whether these are recoverable
- (d) Annexure D describes in detail, the disclosure and accounting treatment of irregular, fruitless and wasteful expenditure.

24. IMPORTANT POINTS TO CONSIDER

- a) This MFMA circular provides for a basis by which municipalities can define, identify and respond to instances of unauthorised, irregular, fruitless and wasteful expenditure.
- b) A Register of unauthorised, irregular, fruitless and wasteful expenditure must be introduced for all transactions falling within this category.
- c) All expenditure falling into the above category must be investigated as required by the MFMA, recommendations submitted to Council for consideration and decisions taken to attend to such matters, where appropriate.
- d) The consequence management framework has been strengthened as it relates to financial misconduct with the establishment of Disciplinary Board and clarifying the roles and responsibilities of Municipal Public Accounts Committees, and other functionaries.
- e) Municipalities and municipal entities must take note of the amendments to the Public Audit Act, which also provides measures to address matters not dealt with timeously and conclusively by the Municipal administration and Council.

Date and signed aton this.....day
of.....20.....

By.....for Council (Meeting
held.....)