



**POLICY GOVERNING
UNAUTHORISED, IRREGULAR,
FRUITLESS AND WASTEFUL (U.I.F +
W) EXPENDITURE
FOR THE
NELSON MANDELA BAY
METROPOLITAN MUNICIPALITY**

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1. DEFINITION OF KEY WORDS

“Accounting Officer”, as defined in the Local Government: Municipal Finance Management Act 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;

“emergency” is defined as 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.

The above description does not include expenditure incurred as a result of poor planning.

“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".

"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;

“Senior Manager” as defined in the Local Government: Finance Management Act 56 of 2003, means a manager referred to in section 56 of the Local Government: Municipal Structures Act

“the Policy” means the Policy Governing Unauthorised, Irregular, *Fruitless and Wasteful Expenditure* in the Nelson Mandela Bay Metropolitan Municipality;

“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”, according to 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 Municipal Finance Management Act (56 of 2003) instructs that *Senior Managers* and other officials of the *municipality* 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)).
- 2.2 The *Municipality* is often challenged reports by the Auditor General in respect of unauthorised, irregular or *fruitless and wasteful expenditure*.
- 2.3 *The Policy* sets out to provide a strategic method and approach for dealing with these matters.
- 2.4 The purpose of *the Policy* is therefore to define and regulate unauthorised, irregular or fruitless and wasteful (UIF + W) expenditure in the *Municipality*.
- 2.5 *The Policy* furthermore seeks 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 and
 - d) address instances of unauthorised, irregular or *fruitless and wasteful expenditure* conclusively.

3. OBJECTIVES

3.1 The objectives of this policy include *inter alia* the following: -

- a) Emphasising the accountability of Directorates including consequence management;
- b) 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*;
- c) Ensuring that resources made available to Directorates 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.

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) Sections 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;

- e) National Treasury, Municipal Finance Management Act 56 of 2003 Circular 68, Circular 68 of May 2013 (which provides clarity on procedure to be followed when dealing with authorised, irregular or fruitless and wasteful expenditure); and
- f) Applicable General Reporting and Accounting Principles (GRAP).

5. SCOPE OF APPLICATION

5.1 The *Policy* applies to *Council* and members of *Council* structures, the *Accounting Officer/City Manager/Municipal Manager*, Chief Financial Officer, *Senior Managers* (or all Section 56/7 employees of Council), municipal officials and all agents of Council. *The Policy* is also applicable to any of its municipal entities, as funds that are expensed by the municipal entity must be expended in terms of the applicable legislation to the parent *municipality*. From a responsibility perspective, this policy is relevant to all employees of the *Municipality*, whether permanent, contractual or temporary.

6. ROLES AND RESPONSIBILITIES

- 6.1 The MFMA outlines the responsibilities of the *Accounting Officer* 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).

d) Section 32 of the MFMA further prescribes the process that must be followed to deal with irregular, unauthorised, fruitless, and wasteful expenditure.

6.2 *Senior managers* and those duly delegated 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) Deciding 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 or provided for (in line with Section 32 of the MFMA).

7. UNAUTHORISED EXPENDITURE

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 immediately report, in writing, such expenditure to the *Accounting Officer* or his/her delegated *Senior Manager*.

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* 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 immediately report, in writing, the particulars of the expenditure to the *Mayor* and then to *Council*.
- 7.1.7 *Council* must refer the matter to the select Committee (namely Municipal Public Accounts Committee (MPAC) or established Sub Committee) that must investigate the matter and advise *Council* accordingly.
- 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.

7.2 Authorising Unauthorised Expenditure

- 7.2.1 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 (e.g. MPAC) 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*, and the *Municipality* has not suffered any material loss as a result of the action.

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

7.3.3 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.

7.4. Adjustments budgets to authorise unauthorised expenditure

7.4.1 *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. 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 the council, but not later than 28 February of the current year” as per the MFMA. 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

- (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 Act.”
- (ii) This approach may also be followed when the Annual Financial Statements for the previous financial year are concluded.

7.5. Recovery of Unauthorised Expenditure

7.5.1 All instances of *unauthorised expenditure* must be recovered from the liable official or political office-bearer, unless the unauthorised expenditure has been authorised by Council in an Adjustments Budget.

- a) 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.
- 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*.

8. IRREGULAR EXPENDITURE

8.1. Principles on Irregular Expenditure

8.1.1 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.

8.2. Categories of Irregular Expenditure

8.2.1. *Irregular expenditure* incurred as a result of non-compliance with a National Treasury Regulation, the MFMA and the *Municipality's* Supply Chain Management Policy.

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) Irregular 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 have not been recorded or approved in terms of the SCM regulations.
- 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 section 116 of the MFMA.

- e) Expenditure resulting from non-adherence to an institution's delegation of authority is also regarded as irregular expenditure.

8.3. Procedures for the Condonation of Irregular Expenditure

- 8.3.1 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. 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.
- 8.3.2 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*.
- 8.3.3 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.
- 8.3.4 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.
- 8.3.5 *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.

- 8.3.6 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 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.

8.4. Ratification of minor breaches of the procurement process

- 8.4.1 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.

- 8.4.2 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 *'irregular' 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).

- 8.4.3 Regulation 36(2) of the SCM regulations states that the *Accounting Officer* must record the reasons for any deviations and report to the next *Council* meeting, and disclose this expenditure in a note to the annual financial statements. The emphasis is on recording the “reasons for any deviations and the associated expenditure”.
- 8.4.4 All breaches of the *Municipality’s* SCM policy will result in *irregular expenditure*, in the event that expenditure is incurred; the monetary value of this *irregular expenditure* is not relevant. 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.
- 8.4.5 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?
 - 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?
- 8.4.6 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 the regulation 36 of the SCM Regulations, only the

Accounting Officer can consider the ratification of minor breaches of procurement processes that are purely of a technical nature.

- 8.4.7 It is advisable 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).
- 8.4.8 The MFMA and the SCM regulations do not specify what these processes should be, however, it is recommended that *Council* investigate the nature of the breach through its Internal Audit Unit or any other investigation body and adopt corrective action as recommended by the Audit Committee.
- 8.4.9 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.

8.5. Disciplinary charges for irregular expenditure

- 8.5.1 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.
- 8.5.2 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*.

8.6. Criminal charges arising from an act of irregular expenditure

- 8.6.1 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.
- 8.6.2 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.

8.7. Recovery of irregular expenditure

- 8.7.1 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*. In other words, the expenditure that is written off is therefore condoned.

- 8.7.2 *Irregular expenditure* resulting from breach 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*.
- 8.7.3 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

9.1. Principles on Fruitless and Wasteful Expenditure

- 9.1.1 No particular expenditure is explicitly identified by the MFMA as fruitless and wasteful.
- 9.1.2 *Fruitless and wasteful expenditure* is expenditure that was made in vain and would have been avoided had reasonable care been exercised.
- 9.1.3 *Fruitless and Wasteful expenditure* will always emanate from an action instigated by an official that resulted in a financial loss to the institution.
- 9.1.4 *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.
- 9.1.5 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 prior to the spending of municipal funds such as the following: -
- 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 immediately 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 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*;
- 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;
- 10.6 Should the investigation reveal that the expenditure is irregular - or *fruitless and wasteful* as defined above, the *Accounting Officer* must immediately report, in writing, the particulars of such expenditure to the *Mayor*. The register must be updated to reflect the outcome of the investigation, and;
- 10.7 The *Accounting Officer* must also include the expenditure in the relevant department’s monthly revenue and expenditure report submitted to *Council* in terms of the MFMA.

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* must provide the committee concerned with such information it may require for the purpose of conducting a proper investigation.
- 11.3 The aforesaid committee may only comprise councillors and should not include full-time *political office bearers* of the *Municipality*. At least 3 councillors are required to constitute a committee.
- 11.4 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.**
- 11.5 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 in the department who makes or permits unauthorised, irregular or *fruitless and wasteful expenditure*; and
 - (c) fails to report unauthorised, irregular or *fruitless and wasteful expenditure* in terms of the MFMA.
- 12.2. As soon as the *Accounting Officer* becomes aware of an allegation of financial misconduct against an 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. Ratification of minor breaches of the procurement process

12.7.1 The *Accounting Officer* may 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 provided that this provision is included in official or committee who committed the breach had the delegated authority to perform the function.

12.8. 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* must institute disciplinary procedures and lay criminal charges against the liable official or political office-bearer.

- (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.

12.9 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.

13. RECOVERY

13.1. Notwithstanding the disciplinary processes, the *Accounting Officer* must identify the official who is responsible for *the unauthorised, irregular or fruitless and wasteful expenditure*.

13.2. The relevant information would normally be evident from the investigation process.

13.3. 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 or prudently.

13.4. Should the official refuse or fail to pay as requested, the matter may be referred to the legal department of the *Municipality* or an attorney for recovery or any other appropriate measure.

13.5. If the amount is not recoverable, the *Accounting Officer* may request *Council* to certify the debt as irrecoverable and write it off in terms of the municipal adopted policy.

- 13.6. 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*.
- 13.7. 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.
- 13.8. 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*.

14. REPORTING

- 14.1 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. 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*.

- 14.2 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.
- 14.3 All *unauthorised, irregular or fruitless and wasteful expenditure* must be reported as a note to the Annual Financial Statements.
- 14.4 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.

15. REGULAR REVIEW OF THE UNAUTHORISED IRREGULAR OR FRUITLESS AND WASTE EXPENDITURE REGISTER

- 15.1 The unauthorised, irregular or *fruitless and wasteful expenditure* register should be reviewed on a monthly basis by the Chief Financial Officer (CFO) of the *Municipality*. 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.

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

- 16.1 *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.
- 16.2 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 of the *Municipality*.
- 16.3 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.

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

- 17.1 Section 125(2)(d)(i) of the MFMA requires 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.
- 17.2 Particulars of any criminal or disciplinary steps taken as a result of such unauthorised, irregular or *fruitless and wasteful expenditures* should be disclosed in the notes to the Annual Financial Statements.

18. PROCESS OF IDENTIFYING UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE

- 18.1 Transaction is identified during its primary stage by the Directorate/Sub-Directorate. If not identified at this stage the transaction can also be identified by the Accountant responsible for the Directorate or Sub-Directorate.
- 18.2 During this process the transaction must be classified according to the necessary category.

19. OPERATIONALISING THE POLICY

- 19.1 The *Accounting Officer* will set up relevant Committee/s that may include officials from the (i) Internal Audit Unit, (ii) Office of the City Manager, (iii) Office of the Chief Operating Officer, (iv) the *Budget and Treasury*, and any relevant stakeholder (internally or externally) in order to operationalise the *Policy* administratively. Structures such as the Municipal Public Accounts Committee (MPAC) are established by Council and mandated as such.

20. POLICY REVIEW

This policy will be reviewed at least once per financial year, preferable during the process of approving the budget, or whenever there is an urgent need to do so.

**ANNEXURE “A” : REGISTER OF UIF+W EXPENDITURE
REGISTER OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**

NELSON MANDELA BAY MUNICIPALITY : DIRECTORATE _____ DEPARTMENT _____															
No	Date of discovery	Date Reported to Accounting Officer	Transaction details				Person Liable (Official or Political Office Bearer)	Type of Prohibited Expenditure (e.g. Unauthorised, Irregular, Fruitless or Wasteful Expenditure)	Status						General comments
			Date of Payment	Payment Number or Reference Number	Amount	Brief Description of Incident			UE / IE / F+ WE	DP	CC	TR	P	WO	

ABBREVIATIONS:

UE: Unauthorised expenditure
 F+WE Fruitless and Wasteful Expenditure
 CC: Criminal charges laid with SAPS
 P: Paid or in process of paying in installments

IE: Irregular Expenditure
 DP: Disciplinary process initiated against responsible person
 TR: Transferred to receivables for recovery
 WO: Written-off by council as irrecoverable

ANNEXURE A

REGISTER OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

<i>NELSON MANDELA BAY MUNICIPALITY : DIRECTORATE _____ DEPARTMENT _____</i>															
No	Date of discovery	Date Reported to Accounting Officer	Transaction details				Person Liabile (Official or Political Office Bearer)	Type of Prohibited Expenditure (e.g. Unauthorised, Irregular, Fruitless or Wasteful Expenditure)	Status						General comments
			Date of Payment	Payment Number or Reference Number	Amount	Brief Description of Incident			UE / IE / F+ WE	DP	CC	TR	P	WO	

ABBREVIATIONS:

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