

- (c) 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 Cooperative Governance and Traditional Affairs (COGTA), who is responsible for administering the MSA. The expenditure should however be dealt with in terms of section 32(2) of the MFMA.
- (d) 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.
- (e) *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.
- (f) 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.

13. PRINCIPLES ON FRUITLESS AND WASTEFUL EXPENDITURE

- 13.1 No particular expenditure is explicitly identified by the MFMA as fruitless and wasteful.
- 13.2 Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised.
- 13.3 Fruitless and Wasteful expenditure will always emanate from an action instigated by an official that resulted in a financial loss to the institution.
- 13.4 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.
- 13.5 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: -

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 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.

Would the expenditure further the interest of the municipality?

The expenditure incurred to obtain a service, inventory, 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.

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 no incurrence of such expenditure will have a negative impact on the lawful activities of the Municipality.

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.

14. PROCESS DEALING WITH IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE

- 14.1 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;
- 14.2 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. An example of such register is attached as "Annexure A";
- 14.3 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;
- 14.4 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. 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 expenditure 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;

- 14.5 Should the investigation reveal that the expenditure is irregular - or fruitless and wasteful expenditure 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;
- 14.6 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; and
- 14.7 For accounting records purposes, the irregular - or fruitless and wasteful expenditure must be treated as an asset in the books of the municipality until such time as the expenditure is recovered from the responsible person or certified by Council as irrecoverable and written off in the Annual Financial Statements

15. ROLE OF COUNCIL COMMITTEE

- 15.1 In terms of section 74 of 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.
- 15.2 The accounting officer must provide the committee concerned with such information it may require for the purpose of conducting a proper investigation.
- 15.3 The aforesaid committee may only be constituted as provided for in the relevant legislation.
- 15.4 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.
- 15.5 An audit committee established in terms of section 166 of the Act is not precluded from assisting the appointed committee with its deliberations.

16. INVESTIGATIONS AND DISCIPLINARY ACTIONS

- 16.1 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.

- 16.2 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 the Mayor initiates an investigation into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts of the applicable legislation.

- 16.3 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 will fully or negligently fail to perform that duty or exercise that power in line with applicable legislation.

- 16.4 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.

- 16.5 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.

- 16.6 **Ratification of minor breaches of the procurement process**

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 the municipality's supply chain management policy and the official or committee who committed the breach had the delegated authority to perform the function.

- 16.7 **Disciplinary charges for Irregular or Fruitless and Wasteful Expenditure**

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:

- (i) *Financial misconduct in terms of section 171 of the MFMA*: in the case of an official that deliberately or negligently:
 - contravened a provision of the MFMA which resulted in irregular expenditure; or
 - made, permitted or authorised an irregular expenditure (due to noncompliance with any of legislation mentioned in the definition of irregular expenditure);
- (ii) *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
- (iii) *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.

16.8 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) 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.

16.9 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.

17. RECOVERY

- 17.1 Notwithstanding the disciplinary process, the accounting officer must identify the official who is responsible for the unauthorised -, irregular or fruitless and wasteful expenditure.
- 17.2 The relevant information would normally be evident from the investigation process.
- 17.3 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. 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.
 - (b) The accounting officer is expected to apply his or her discretion judiciously.
- 17.4 Should the official refuse or fail to pay as requested, the matter may be referred to an attorney for recovery.
- 17.5 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.
- 17.6 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 is written off by the Council.
- 17.7 Irregular expenditures 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.
- 17.8 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.

18. REPORTING

- 18.1 The accounting officer must comply with the following reporting requirements: attached as "Annexure B";
- 18.2 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. 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
- 18.3 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.

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

18.5 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.

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

19.1 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, dealt with, recorded and that no mathematical errors exists.

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

20.1 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.

20.2 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.

20.3 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.

20.4 DISCLOSURE OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE

MFMA section 125 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.

20.5 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.

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

- 21.1 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.
- 21.2 During this process the transaction must be classified according to the necessary category.

22. OPERATIONALISING THE POLICY

- 22.1 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.

23. 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.

Register of Unauthorised, Irregular, Fruitless and Wasteful Expenditure

Name of Municipality:																
Month:																
No.	Date of Discovery	Date reported to Accounting Officer	Transaction Details				Person Liable (Official or Political Office Bearer)	Type of Prohibited Expenditure	Status							
			Date of Payment	Payment Number/EF T or Cheq Number	Amount R	Description of Incident			U	D	C	T	R	p	W	O
1																
2																
3																
Total						0.00										

Abbreviations:

- UI Under Investigation
- DP Disciplinary Process initiated against responsible person
- CC Criminal Charges laid with SAPS
- TR Transferred to recievables for recovery
- P Paid or in process of paying in instalments
- WO Written-off by council as irrecoverable

REPORTING REQUIREMENTS

The following diagram provides guidance as to the reporting requirements regarding unauthorised, irregular, fruitless and wasteful expenditure:

