

POLICY DIRECTIVES ON:

**UNAUTHORISED, IRREGULAR AND
FRUITLESS AND WASTEFUL EXPENDITURE**

SCOPE AND PURPOSE

- The primary goal of this policy is to give directives on unauthorised, irregular and fruitless and wasteful expenditure. It also gives guidance in dealing with cases which are regarded financial misconduct under the Municipal Finance Management Act No. 56 of 2003, sections 29, 32 and 62.
 - Serves as a standard of performance where actual results can be measured against policy and procedures to determine their success or failure and possible improvements.

Background

- Municipalities very often find themselves faced with situations where unauthorised, irregular or fruitless and wasteful expenditure is incurred. Sections 29, 32 and 62 are meant to address such conditions.

Definitions

- For the purpose of this policy, the following definitions apply:

“Unauthorised Expenditure”:

- Overspending of a vote or main division within a vote.
- Expenditure not in accordance with the purpose of the vote, or in the case of the main division, not in accordance with the purpose of the main division.

“Irregular Expenditure”:

- Expenditure incurred in contravention of or that is not in accordance with requirements of any applicable legislation, including:
 - The MFMA
 - Supply Chain Management Regulations,
 - The Mogalakwena Supply Chain Management Policy or any by-laws giving effect to such policy
 - The Municipal Systems Act

“Fruitless and Wasteful Expenditure”

- Expenditure made in vain and which would have been avoided had reasonable care been exercised.

“Vote”

One of the main segments into which a budget of the municipality is divided for the appropriation of money for different departments or functional areas of the municipality, and which specifies the total amount that is appropriated for the purpose of the department or functional area concerned.

“overspending”

- When expenditure under the vote exceeds the amount appropriated for that vote or when expenditure under the department exceeds the amount appropriated for that department, resulting in unauthorised expenditure.
- In general, overspending occurs when expenditure exceeds amount budgeted for and becomes unauthorised expenditure only if the municipal budget or budget of a department within municipality is overspent.

Unforeseen and unavoidable expenditure (s29, MFMA)

- In terms of s29 of the MFMA, the mayor of a municipality may in emergency or other exceptional circumstances authorise unforeseen and unavoidable expenditure for which no provision was made in an approved budget.
- Any such expenditure must not exceed a prescribed percentage of approved annual budget (no prescription as yet – suggest 10%). The expenditure must be reported to Council by the Mayor in its next meeting and must be appropriated in the next budget adjustments.
- If such budget adjustments are not passed by Council within 60 days, the expenditure shall be considered unauthorised.

Unauthorised, irregular or fruitless and wasteful expenditure (s32, MFMA)

- A political office bearer is liable for unauthorised expenditure if that office bearer knowingly or after having been advised by the Accounting Officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;
- The Accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer. The accounting officer is however not liable if he informed the Mayor, council or executive committee in writing that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful should it be incurred.
- Any political officer bearer or official who deliberately or negligently commit, make or authorise an irregular, fruitless and wasteful expenditure is liable for that expenditure.

Actions following discovery of unauthorised, irregular or fruitless expenditure (s32 ss2-7 and 62(1)(d & e))

- The municipality shall recover unauthorised, irregular, or fruitless and wasteful expenditure from the person or persons liable for that expenditure.
- The accounting officer must promptly inform the mayor and the MEC for CoGHSTA in Limpopo, and Auditor General, in writing of any unauthorised, irregular, or fruitless and wasteful expenditure, whether any person is liable or under investigation for such expenditure and the steps taken to recover or rectify such expenditure and prevent a recurrence of such expenditure.
- The accounting officer must report to South African Police Service all cases of alleged irregular expenditure that constitute a criminal offence and cases of theft and fraud that occurred in the municipality.

- Section 62(1)(d) of MFMA also requires that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of chapter 15 of this Act.
- The council of the municipality must take all reasonable steps to ensure that cases of fraud and theft are reported to SAPS if the charge is against the Accounting Officer or if the Accounting Officer fails to report such cases against any official of the municipality.

Process to follow on discovery of unauthorised, irregular, or fruitless and wasteful expenditure:

A municipality **must** recover the unauthorised, irregular, or fruitless and wasteful expenditure **unless** the expenditure is certified by council as irrecoverable and condoned by council, **but only**;

- After investigation by Council Committee

What the council committee should look for:

- Nature and amount of expenditure,
- Root cause in terms of
 - Leadership (control environment)
 - Financial management (processes in place to avoid and detect)
 - Governance (policies and procedures in place)
- Person(s) liable
- Intentionally
- Value received
- Recommendation – condone/write off or recover.
- Internal control measures implemented to prevent recurrence.

Investigation of alleged financial misconduct constituting criminal offence.

In the event of unauthorised, irregular, or fruitless and wasteful expenditure being incurred in Mogalakwena Local Municipality and pointing to theft and fraud, the following will apply in line with provisions of the MFMA:

- The municipality shall investigate allegations of occurrence of such expenditure against any political office bearer, the accounting officer, chief financial officer, a senior manager, or any other official of the municipality.
- If the results warrant such a step, institute disciplinary proceedings against such a person in accordance with the MFMA, systems and procedures referred to in s67 of the Municipal Systems Act, read with schedule 2 of that Act and any other applicable legislation or directives.

If anybody is found guilty of financial misconduct, such person(s) shall be liable to legal action with regard to recovery of the money.