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UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

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INDEX

1.	DEFINITIONS AND ACRONYMS.....	4
2.	POLICY STATEMENT.....	7
3.	PREAMBLE.....	7
5.	OBJECTIVES.....	9
6.	SCOPE.....	10
7.	GUIDING PRINCIPLES.....	10
8.	IDENTIFICATION OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE AND TREATMENT THEREOF	11
9.	UNAUTHORISED EXPENDITURE.....	11
10.	IRREGULAR EXPENDITURE	15
11.	FRUITLESS AND WASTEFUL EXPENDITURE.....	15
12.	REPORTING ON UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	16
13.	RECOVERY UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	19
14.	CONSEQUENCES OF NON-COMPLIANCE & DISCIPLINARY ACTION.....	20
15.	PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	21
16.	LEGISLATIVE AND REGULATORY FRAMEWORK	22
19.	IMPLEMENTATION: ROLES AND RESPONSIBILITIES.....	23
21.	REVISION DATE.....	24
22.	ANNEXURES.....	24

1. DEFINITIONS AND ACRONYMS

1.1 Statutory and Regulatory

This Procedure applies to the following meanings and interpretations:

#	TERM	DESCRIPTION
1.1	Councillor	means member of municipal council of TLM and includes political office bearers
1.2	Fruitless and wasteful expenditure	means expenditure that was made in vain and would have been avoided had reasonable care been exercised
1.3	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 MFMA
1.4	Irregular expenditure	<p>In relation to a municipality or municipal entity, means -</p> <p>expenditure incurred by a municipality 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;</p> <p>“(170. (1) The National Treasury may on good grounds approve a departure from a treasury regulation or from any condition imposed in terms of this Act.</p> <p>(2) Non-compliance with a regulation made in terms of section 168, or with a condition imposed by the National Treasury in terms of this Act (MFMA), may on good grounds shown be condoned by the Treasury.)”</p> <p>expenditure incurred by a municipality 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 this Act;</p> <p>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 20 of 1998);</p> <p>expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of TLM 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; provided that the contravention is not also a contravention of the MFMA or the SCM regulations;</p> <p>But excludes expenditure by a municipality which falls within the definition of ‘unauthorised expenditure’</p>
1.5	Official	<p>in relation to a TLM, means—</p> <p>an employee of a TLM.</p> <p>a person seconded to TLM or to work as a member of the staff of the TLM;</p> <p>or a person contracted by TLM to work as a member of the staff of the TLM or otherwise than as an employee.</p>
1.6	Overspending	Means in relation to the budget of a municipality, means causing the operational or capital expenditure incurred by

#	TERM	DESCRIPTION
		the municipality during a financial year to exceed the total amount appropriated in that year's budget for its operational or capital expenditure, as the case may be; In relation to a vote, means causing expenditure under the vote to exceed the amount appropriated for that vote; or in relation to expenditure under section 26 of the MFMA, means causing expenditure under that section to exceed the limits allowed in subsection (5) of that section.
1.7	Political Office Bearer	means the speaker, mayor, or a member of the executive committee as referred to in the Municipal Structures Act
1.8	Prohibited expenditure	in relation to this policy refers to unauthorised, irregular, fruitless and wasteful expenditure
1.9	Senior Manager	means a manager referred to in section 56 of the Municipal Systems Act
1.10	Unauthorised expenditure	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" otherwise than in accordance with any conditions of the allocation; ("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;) or (f) a grant by TLM otherwise than in accordance with the MFMA.
1.11	Vote	means 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 which specifies the total amount that is appropriated for the purposes of the department or functional area concerned

1.2 ACRONYMS

#	TERM	DESCRIPTION
1.2.1	CFO	Chief Financial Officer
1.2.2	SM	Senior Manager
1.2.3	MIG	Municipal Infrastructure Grant
1.2.4	MFMA	Municipal Finance Management Act, 2003, No. 56 of 2003
1.2.5	MPAC	Municipal Public Account Committee of Thulamela Local Municipality
1.2.6	MM or AO	Municipal Manager or Accounting Officer
1.2.7	SAPS	South African Police Services
1.2.8	MSA	Municipal Systems Act, 2000, No. Act 32 of 2000
1.2.9	Structure Act	Municipal Structures Act, 1998, Act No 117 of 1998
1.2.10	RPOBA	Remuneration of Public Office Bearers Act
1.2.12	MBRR	Municipality Budget Rules and Regulations
1.2.13	TLM	Thulamela Local Municipality
1.2.14	MTSF	Medium Term Strategic Framework
1.2.15	SCM	Supply Chain management
1.2.16	Municipality	Thulamela Local Municipality

2. POLICY STATEMENT

- 2.1 As part of accountability process, municipalities must maintain full and proper records of their affairs, as required by sections 62(1)(b) and 95(b) of the MFMA. Accordingly, the accounting officer must ensure that the municipality has proper processes in place to record and manage unauthorised, irregular, fruitless and wasteful expenditure should it occur. Therefore, as part of complying with these provisions of the MFMA, accounting officers (who may delegate the task to the chief financial officer) to ensure compliance to avoid unauthorized, Irregular, Fruitless and Wasteful Expenditure.
- 2.2 All unauthorized, irregular, fruitless and wasteful expenditure must be investigated, as required by the MFMA. Appropriate measures to monitor the implementation of its recommendations emanating from such investigations to promote effective accountability should be promoted.

3. PREAMBLE

- 3.1 This strategy document aims to map out the processes and actions that should be followed to contribute towards achieving the goals under priority 1 of the 2019-24 MTSF. The focus is on reducing unauthorised, irregular, fruitless and wasteful UIF&W expenditure in municipalities and municipal entities. In this regard, the policy also describes the key roles and responsibilities of public representatives and the administration. Timely decision-making is required for the successful implementation of this policy; hence, emphasis is also placed on consequence management to ensure that officials are held accountable for their actions or non-actions.
- 3.2 The role clarification will assist in eliminating duplication of effort, streamline support, and ensure a coherent and consistency application of the prescripts across all municipalities and municipal entities. In recent years, there has been an increase in incidences of UIF&W expenditures. This is due to several factors, which include but are not limited to the repeated failures by municipalities to prevent non-compliance and to introduce timely and decisive corrective measures to ensure effective implementation of relevant laws and regulations. The lack of decisiveness of councils and municipal officials in dealing with the UIF&W expenditure has resulted in a negative public perception and narrative. Failing to develop and implement a UIF&W reduction strategy complemented by appropriate consequences for transgression of the law will attract enforcement measures, that could include withholding of grants.

- 3.3 The lack of progress also highlights the shortcomings in the municipal policies, procedures, practices and accountability arrangements from the municipal administration, municipal council and its leadership. This has been highlighted in several reports, including management and performance reports, MFMA compliance reports, internal audit and audit committee reports, municipal public accounts committees report, that point to gaps and inadequacy in monitoring, reporting and implementing corrective actions.
- 3.4 In most instances this can be attributed to unqualified or inexperienced officials appointed to key positions, lack of performance ethos or ethical leadership and a lack of transparency in dealing with public funds. Often recommendations to address the gaps are not followed through by municipal officials, council delay in taking decisions resulting in continuation of instances of UIF&W expenditure. The identified shortcomings are also due to delays in establishing and effective functioning of internal audit units, audit committees, disciplinary boards to conclude investigations where allegations of financial misconduct are reported. Such failures in both the administration and councils must be addressed urgently to ensure successful outcomes.
- 3.5 In terms of section 62 of the MFMA, the Accounting Officer is responsible for managing the financial affairs of the Municipality and he/she must, for this purpose, inter alia;
- 3.6 Take all reasonable steps to ensure that unauthorised, irregular; fruitless and wasteful expenditure and other losses are prevented;
- 3.7 Ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official or councillor of the Municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA.
- 3.8 This is to ensure the effective, efficient and transparent systems of financial, risk management and internal control over the municipality's financial affairs.

4. PURPOSE

4.1 The purpose of the policy is to define and determine how to address the unauthorised, irregular or fruitless and wasteful expenditure in the Municipality, and / or dealing with such matters. Furthermore seeks to establish processes on how to:

4.1.1 Prevent unauthorised, irregular or fruitless and wasteful expenditure as compelled by the MFMA;

4.1.2 Identify and investigate unauthorised, irregular or fruitless and wasteful expenditure;

4.1.3 Respond appropriately in accordance with the law;

4.1.4 Address and report on instances of unauthorised, irregular or fruitless and wasteful expenditure conclusively and;

4.1.5 Deal with the Limitation of Scope.

4.2 The MFMA instructs that Senior Managers and other officials of the Municipality exercising financial management responsibilities take all reasonable steps to ensure that “any unauthorised, irregular or fruitless and wasteful expenditure and any other losses are prevented” (See sections 62(1)(d), 78(1)(c) and 81(1)(d)).

5. OBJECTIVES

The objectives of this policy are to:

5.1 Provide for measures to identify any irregular expenditure or any fruitless and wasteful expenditure.

5.2 Provide frameworks to avoid any irregular expenditure or any fruitless and wasteful expenditure.

5.3 Provide for recovery of irregular expenditure or any fruitless and wasteful expenditure.

5.4 Provide for reporting on any irregular expenditure or any fruitless and wasteful expenditure.

- 5.5 Set out policy and procedures with regards to unauthorised, irregular, fruitless and wasteful expenditure.
- 5.6 Ensure that unauthorised, irregular, or fruitless and wasteful expenditure is detected, processed, recorded, and reported in a timely manner;
- 5.7 Ensure that Officials and Political Office Bearers have a clear and comprehensive understanding of the procedures they must follow when addressing unauthorised, irregular, fruitless and wasteful expenditure;
- 5.8 Ensure that Municipality's resources are managed in compliance with the MFMA, the municipal regulations and other relevant legislation;
- 5.9 Ensure that all officials and Political Office Bearers are aware of their responsibilities in respect of unauthorised, irregular, fruitless and wasteful expenditure.

6. SCOPE

- 6.1 This policy applies to all officials and Political Office Bearers of Municipality.
- 6.2 Officials and Political Office Bearers must ensure all instances of unauthorised, irregular expenditure as well as fruitless and wasteful expenditure is prevented where possible and is detected and reported in a timely manner.

7. GUIDING PRINCIPLES

- 7.1 The Municipal Manager shall investigate allegations of unauthorized, irregular or fruitless and wasteful expenditure against any official of the municipality.
- 7.2 If the outcome of the investigation so warrants, disciplinary proceedings shall be instituted against the official(s) concerned in accordance with the provisions of MFMA and the municipality's disciplinary code and procedures.
- 7.3 Where appropriate, recovery of irregular, fruitless and wasteful expenditure shall be instituted by the municipality in accordance with MFMA.

8. IDENTIFICATION OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE AND TREATMENT THEREOF

- 8.1 All Municipal Officials / Political office bearers have the responsibility to immediately report any unauthorized, irregular or fruitless and wasteful expenditure once identified.
- 8.2 If the adjustment budget in which the unforeseeable and unavoidable expenditure was appropriated is not passed within 60 days after the expenditure was incurred, such expenditure shall be regarded as unauthorized.
- 8.3 Any expenditure incurred by the municipality, for which no appropriation was made in terms of the approved budget, and / or in excess of the limits of the amount appropriated for in the municipality's approved budget or different votes in an approved budget.
- 8.4 The council may, in emergency or other exceptional circumstances authorize unforeseeable and unavoidable expenditure for which no provision was made in an approved budget. Such expenditure shall not exceed 1% of the approved annual budget; and must be appropriate in an adjustments budget which must be passed within 60 days after the expenditure is incurred.

9. UNAUTHORISED EXPENDITURE

- 9.1 The 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.
- 9.2 Expenditure incurred within the ambit virements policy or council resolution is not regarded as unauthorised expenditure.
- 9.3 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.
- 9.4 Unauthorised expenditure would include:
 - 9.4.1 Any overspending in relation to both the operational budget and capital budget of the municipality.

- 9.4.2 Overspending in relation to each of the votes on both the operational budget and capital budget.
- 9.4.3 Use funds allocated to one department for purposes of another department or for purposes that are not provided for in the budget;
- 9.4.4 Funds that have been designated for a specific purpose or project within a departments vote may not be used for any other purpose;
- 9.4.5 Any use of conditional grant funds for a purpose other than that specified in the relevant conditional grant framework is classified as unauthorised expenditure;
- 9.4.6 Any grant to an individual, unless it is in terms of the municipality's indigent policy or bursary scheme;
- 9.4.7 Unforeseen and unavoidable expenditure not authorised by the Accounting Officer within 60 days after the expenditure was incurred.
- 9.4.8 Any overspending on non-cash items, for example depreciation, impairments, provisions.
- 9.5 Officials and councillors must ensure that all instances of fruitless and wasteful expenditure are prevented where possible and are detected and reported in a timely manner.
- 9.6 Given the definition of unauthorised expenditure, the following are examples of expenditure that are NOT unauthorised expenditure:
 - 9.6.1 Any over-collection on the revenue side of the budget as this is not an expenditure; and
 - 9.6.2 Any expenditure incurred in respect of:
 - 9.6.2.1 any of the transactions mentioned in section 11(1)(a) to (j) of the MFMA;
 - 9.6.2.2 re-allocation of funds and the use of such funds in accordance with a council approved virement policy;

9.6.2.3 overspending of an amount allocated by standard classification on the main budget Table A2 (Budgeted Financial Performance: revenue and expenditure by standard classification), as long as it does not result in overspending of a “vote” on the main budget Table A3 (Budgeted Financial Performance: revenue and expenditure by municipal vote) and Table A4 (Budgeted Financial Performance: revenue and expenditure (read in conjunction with supporting Table SA1) of the MBRR; and;

9.6.2.4 overspending of an amount allocated by standard classification on the main budget Table A5 (Budgeted Capital Expenditure by vote, standard classification and funding) of the MBRR so long as it does not result in overspending of a “vote” on the main budget Table A5.

9.6.3 Any of the transactions mentioned in section 11(1)(a) to (j) of the MFMA:

“(11(1) Only the accounting officer or the chief financial officer of a municipality, or any other senior financial official of the municipality acting on the written authority of the accounting officer, may withdraw money or authorise the withdrawal of money from any of the municipality’s bank accounts, and may do so only—

(a) to defray expenditure appropriated in terms of the approved budget

(b) to defray expenditure authorised in terms of section 26(4);

(c) to defray unforeseeable and unavoidable expenditure authorised in terms of section 29(1);

(d) in the case of a bank account opened in terms of section 12, to make payments from the account in accordance with subsection (4) of that section;

(e) to pay over to a person or organ of state money received by the municipality on behalf of that person or organ of state, including—

(i) money collected by the municipality on behalf of that person or organ of state by agreement; or

(ii) any insurance or other payments received by the municipality for that person or organ of state;

(f) to refund money incorrectly paid into a bank account;

(g) to refund guarantees, sureties and security deposits;

(h) for cash management and investment purposes in accordance with section 13;

(i) to defray increased expenditure in terms of section 31; or

(j) for such other purposes as may be prescribed.

- 9.7 Money withdrawn from a bank account under the following circumstances, without appropriation, in terms of an approved budget, is not regarded as unauthorised expenditure:
- 9.7.1 To defray expenditure authorised in terms of section 26 (4) of the MFMA, [Section 26: Consequences of failure to approve a budget before the start of the budget year];
 - 9.7.2 To defray unforeseen / unavoidable expenditure circumstances strictly in accordance with Section 29 (1) of the MFMA [Section 29: Unforeseen and unavoidable expenditure] failing which the unforeseen /unavoidable expenditure is unauthorised.
 - 9.7.3 re-allocation of funds and the use of such funds in accordance with a council approved virements policy;
 - 9.7.4 Expenditure incurred from a special bank account for relief, charitable or trust purposes provided of course that it is done strictly in accordance with Section 12 of the MFMA [Section 12: Relief, charitable, trust or other funds];
 - 9.7.5 To pay over to a person or organ of state money received by the Municipality on behalf of that person or organ of state, including—
 - 9.7.5.1 money collected by the Municipality on behalf of that person or organ of state by agreement; or
 - 9.7.5.2 any insurance or other payments received by the Municipality for that person or organ of state;
 - 9.7.6 To refund money incorrectly paid into a bank account;
 - 9.7.7 To refund guarantees, sureties and security deposits;
 - 9.7.8 For cash management and investment purposes in accordance with section 13 [Section 13: Cash Management and Investments];
 - 9.7.9 To defray increased expenditure in terms of section 31 [Section 31: Shifting of funds between multi-year appropriations].

9.7.10 Any expenditure approved in terms the Municipal Budget and Reporting Regulations (MBRR).

10. IRREGULAR EXPENDITURE

- 10.1 Irregular expenditure is expenditure that is contrary to the MFMA, the Municipal Systems Act (Act No.32 of 2000), and the Public Office Bearers Act (Act No. 20 of 1998) or is in contravention of the Municipality 'supply chain management policy and regulations;
- 10.2 Irregular expenditure is actually expenditure that is in violation of some or other procedural/legislative requirement as specified in the MFMA;
- 10.3 Irregular expenditure excludes unauthorised expenditure;
- 10.4 Although a transaction or an event may trigger irregular expenditure, a Council will only identify irregular expenditure when a payment is made. The recognition of irregular expenditure must be linked to a financial transaction;
- 10.5 If the possibility of irregular expenditure is determined prior to a payment being made, the transgression shall be regarded as a matter of non-compliance.

11. FRUITLESS AND WASTEFUL EXPENDITURE

- 11.1 All officials and political office bearers must always act cautiously when spending public money and ensure that they abide by the public and accountability principles which are to promote "efficient, economic and effective use of resources and the attainment of value for money";
- 11.2 Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised;
- 11.3 This type of expenditure is incurred where no value for money is received for expenditure or the use of resources. No particular expenditure is explicitly identified by the MFMA as fruitless and wasteful;
- 11.4 Expenditure incurred that has been budgeted for (authorised) and was not regarded as irregular expenditure could be classified as fruitless and wasteful expenditure on application of the principles in 11.5 below.

11.5 An expense is only fruitless and wasteful in terms of this policy if:

11.5.1 It was made in vain (meaning that the municipality did not receive value for money) and;

11.5.2 would have been avoided had reasonable care been exercised.

11.6 In determining whether expenditure is fruitless and wasteful, officials and councillors must apply the requirement of reasonable care as an objective measurement to determine whether or not a particular expenditure was fruitless and wasteful, that is:

11.6.1 Would the average man (in this case the average experienced official or councillor) have incurred the particular expenditure under exactly the same conditions or circumstances?

11.6.2 Is the expenditure being incurred at the right price, right quality, right time and right quantity?

11.7 Officials and councillors must ensure that all instances of fruitless and wasteful expenditure are prevented where possible, and are detected and reported in a timely manner.

12. REPORTING ON UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

12.1 The Municipal Manager must promptly inform the Mayor, the MEC for local government in the Province and the Auditor-General, in writing, of any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality:

12.1.1 whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure;

12.1.2 whether the steps that have been taken to recover or rectify such expenditure; and to prevent a recurrence of such expenditure.

12.2 All expenditure classified as unauthorised, irregular, fruitless and wasteful expenditure must be reported to:

12.2.1 The Finance Portfolio Committee on a monthly basis;

12.2.2 Executive Committee on a monthly basis;

12.2.3 Council on a quarterly basis;

12.2.4 MPAC on a quarterly basis; and

12.2.5 Audit Committee on a quarterly basis.

12.3 In accounting for unauthorised, irregular, fruitless and wasteful expenditure, the municipal manager or delegated officials (as may be relevant) must ensure that:

12.3.1 All confirmed unauthorised, irregular, fruitless and wasteful expenditure must be recorded in a separate account, in the accounting system of the Municipality, created for each of the above types of expenditure.

12.3.2 All such expenditure is disclosed in the annual financial statements as required by the MFMA and treasury requirements.

12.4 Details pertaining to unauthorised, irregular, fruitless and wasteful expenditure must be disclosed in the Municipality's Annual Report.

12.5 All reports made by officials, councillors or political office bearers must be treated with utmost confidentiality.

MAINTAINING OF REGISTER FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

12.6 Council must maintain a register of all incidents of unauthorised, irregular, fruitless and wasteful expenditure.

12.7 These registers must be updated monthly.

INVESTIGATION OF UNAUTHORISED AND IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

12.8 All expenditure alleged to have been unauthorised, irregular, fruitless and wasteful expenditure must be referred to a Council appointed committee for investigation.

12.9 If, 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, then the municipality must consider instituting disciplinary action and/or criminal charges against the liable person/s.

12.10 If the unauthorized, irregular, fruitless and wasteful expenditure falls within the ambit of the above description, then the Council, Mayor or Municipal Manager (as may be relevant) must institute disciplinary action as follows:

12.10.1 Financial misconduct in terms of section 171 of the MFMA: in the case of an official that deliberately or negligently:

12.10.1.1 contravened a provision of the MFMA which resulted in irregular expenditure; or

12.10.1.2 made, permitted or authorised an irregular expenditure (due to non-compliance with any of legislation mentioned in the definition of irregular expenditure).

12.10.2 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

12.10.3 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 Councillor improperly interfered in the management or administration of the municipality.

12.11 The Council, Mayor or Municipal Manager or delegated officials (as may be relevant) must promptly report to the SAPS all cases of alleged:

12.11.1 Irregular expenditure that constitute a criminal offence; and

12.11.2 Theft and fraud that occurred in the municipality.

12.12 The Mayor must take all reasonable steps to ensure that all cases referred to in the above paragraph are reported to the South African Police Service if:

12.12.1 The charge is against the MM; or

12.12.2 The MM fails to comply with the above paragraph.

13. RECOVERY UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

13.1 A municipality must recover unauthorised, irregular, or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure –

13.1.1 in the case of unauthorised expenditure, is

13.1.2 authorised in an adjustment budget, OR

13.1.3 certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by council; and

13.2 In the case of irregular or fruitless and wasteful expenditure, is, after investigation by council committee, certified by council as irrecoverable and written off by council.

13.3 Irregular expenditures resulting from breaches of the Public Office-Bearers Act must be recovered from the political office bearer to whom it was paid and not who might not have been responsible for making, permitting, or authorising the irregular expenditure.

13.4 Once it has been established who is liable for the unauthorised, irregular, fruitless and wasteful expenditure, the Municipal Manager must in writing request that the liable political office bearer or official pay the amount within 30 days or in reasonable instalments.

13.5 Without limiting liability in terms of the common law or other legislation, must recover any such expenditure, in full, from official or Public Office Bearer where:

13.5.1 In the case of a Public Office Bearer, the Public Office Bearer knowingly or after having been advised by the MM that the expenditure is likely to result in unauthorised, irregular, or fruitless and wasteful expenditure, instructed an official of the Municipality to incur the expenditure.

13.5.2 In case of the official, the official deliberately or negligently incurred such expenditure.

13.6 The fact that the Council may have approved the expenditure for writing off or deemed it to be irrecoverable is no excuse in:

13.6.1 Either disciplinary or criminal proceedings against a person charged with the commission of an offence or a breach of the MFMA relating to such unauthorised, irregular, or fruitless and wasteful expenditure.

13.6.2 Recovery of such expenditure from such person.

13.7 If the person fails to comply with the request, the matter must be recovered through the normal debt collection process of the municipality.

14. CONSEQUENCES OF NON-COMPLIANCE & DISCIPLINARY ACTION

14.1 Any official, councillor or political officer bearer not complying with this policy could be found guilty of Financial Misconduct.

14.2 Any councillor or political office bearer of the Municipality will be committing an act of financial misconduct if that councillor deliberately or negligently makes or permits, or instructs another official of the Municipality to make, an unauthorised, irregular, or fruitless and wasteful expenditure.

14.3 In terms section 172 and 173 of the MFMA, an accounting officer is guilty of financial misconduct and an offence respectively if he or she:

14.3.1 wilfully or negligently fails to take effective and appropriate steps to prevent unauthorized, irregular or fruitless and wasteful expenditure as required by the MFMA;

14.3.2 fails to take effective and appropriate disciplinary steps against an official in the department who makes or permits unauthorized, irregular or fruitless and wasteful expenditure;

14.3.3 fails to report unauthorized, irregular or fruitless and wasteful expenditure in terms of the MFMA. 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.

14.3.4 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 willfully or negligently fails to perform that duty or exercise that power in line with applicable legislation. In terms of the MFMA, the accounting officer must take appropriate and effective disciplinary steps against an official who makes or permits unauthorized, irregular or fruitless and wasteful expenditure;

14.3.5 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:

14.3.5.1 circumstances of the transgression;

14.3.5.2 extent of the expenditure involved;

14.3.5.3 nature and seriousness of the transgression

15. PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UNAUTHORIZED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

15.1 If any official or councillor who has complied with this policy and as a result thereof has been subjected to intimidation, victimisation and/ or threats such official or councillor should immediately report such threats, victimisation, or intimidation immediately to the MM or the Mayor where applicable.

15.2 The MM or Mayor must immediately take appropriate action to ensure that protection of the official or councillor after receiving the above report.

15.3 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.

16. LEGISLATIVE AND REGULATORY FRAMEWORK

The following enabling legislation sets the precedent for the development of unauthorised, irregular, fruitless and wasteful expenditure Policy:

- 16.1 The Constitution of the Republic of South Africa, 1996, Act No 108 of 1996;
- 16.2 The Municipal Finance Management Act, 2003, No 56 of 2003;
- 16.3 The Remuneration of Public Office Bearers Act, 1998, (Act 20 of 1998);
- 16.4 Municipal Systems Act, 2000, Act No 32 of 2000;
- 16.5 MFMA Circular 68; and
- 16.6 Delegations of Authority;
- 16.7 Procedures for unauthorised, irregular, fruitless and wasteful expenditure;
- 16.8 Policy on financial misconduct;
- 16.9 Breach of the Code of Conduct for Municipal Staff Members; and (e) Breach of the Code of Conduct for Councillor.
- 16.10 Any other legislation, regulation or circular that may impact this policy including that issued terms of the PFMA that may include reference to all government departments and institutions.

17. MONITORING AND EVALUATION

- 17.1 On a continuous basis this policy will be accessed to determine its relevance and effectiveness and to assess whether it has achieved the intended objectives

18. STAKEHOLDER ENGAGEMENT

- 18.1 All the relevant stakeholders internal and external will be consulted through the development and implementation of this policy

19. IMPLEMENTATION: ROLES AND RESPONSIBILITIES

- 19.1 In terms of section 78(1) of the MFMA, each senior manager of a municipality and each official of a municipality exercising financial management responsibilities must take all reasonable steps within their respective areas of responsibility to ensure that any unauthorised, irregular, fruitless and wasteful expenditure and any other losses are prevented.
- 19.2 In terms of section 105(1)(e) of the MFMA, each official of a municipal entity exercising financial management responsibilities to take all reasonable steps within that official's area of responsibility to ensure that any irregular expenditure, fruitless and wasteful expenditure, and other losses are prevented.

20. CONCLUSION

- 20.1 Irregular expenditure resulting from non-compliance with the MFMA and the MSA cannot be condoned by council and approval must be sought from the National Treasury, the Minister of Co-operative Governance and Traditional Affairs respectively. Irregular expenditure resulting from non-compliance with the Public Officer-Bearer's Act cannot be condoned and such irregular expenditure must be recovered from the political officer-bearer concerned. A council may condone irregular expenditure resulting from a contravention of the SCM policy provided that the contravention is not also a contravention of the MFMA or the SCM Regulations, in which case only the National Treasury can condone a contravention of the SCM Regulations.
- 20.2 Minor breaches of the procurement process can be ratified by the accounting officer (if the municipality's SCM policy allows for it). Only the breaches in the process can be ratified and not the irregular expenditure itself. The irregular expenditure must still be ratified by council.
- 20.3 In conclusion, the Unauthorized, Irregular, Fruitless and Wasteful Expenditure Policy outlines critical matters raised in the purpose and the objectives. The provisions in the policy contents highlights the need for municipality to adhere to the key issues narrated which will address challenges encountered and lead to effective and efficient implementation of the policy.

20.4 The Municipality commits to make resources available, monitor and evaluate the effectiveness of the policy, thus encouraging all relevant stakeholders to familiarise themselves with the policy and take necessary actions to fully participate and ensure compliance of the policy.

21. REVISION DATE

21.1 This policy shall be reviewed on an annual basis or as and when the needs arise

22. ANNEXURES

22.1 Business Process Map

22.2 Standard Operating Procedure