

# **METSIMAHOLO LOCAL MUNICIPALITY**

## **Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy**



**2020/2021**

## INDEX

DEFINITIONS	4
INTRODUCTION	5
PART 1: PURPOSE AND OBJECTIVES	5
PART 2: ENABLING LAGISLATION	5
PART 3: LEGISLATIVE CONTEXT	6
PART 4: POLICY PRINCIPLES	7
PART 5: IDENTIFICATION OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE	8
5.1 Unauthorised Expenditure	8
5.2 Fruitless And Wasteful Expenditure	9
5.3 Irregular Expenditure	9
PART 6: CONSEQUENCES FOR IRREGULAR OR FRUITLESS AND WASTEFULL EXPENDITURE	10
PART 7: ACCOUNTING ALLOCATION OF UNAUTHORISED, IRREGULAR AND WASTEFULL EXPENDITURE	11
PART 8: DISCIPLINARY AND CRIMINAL CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	11
PART 9: REPORTING	12
PART 10: REVIEW AND APPROVAL	14

## DEFINITIONS

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

**Irregular expenditure:** means expenditure incurred by the municipality in contravention of Municipal Finance Management Act, Municipal Systems Act, Public Office-Bearers Act, 1998, Supply chain management policy and any other applicable procurement rules and regulations and which has not been dealt with in terms of Section 170 of Municipal Finance Management Act.

**Unauthorised expenditure:** means any expenditure incurred by the local municipality otherwise than in accordance the approved budget and includes overspending of the total amount appropriated in the entity's approved budget; and overspending of the total amount appropriated for a vote in the approved budget.

**MPAC:** means Municipal Public Accounts Committee

**MLM:** means Metsimaholo Local Municipality

**SARS:** means South African Revenue Service

## **INTRODUCTION**

In terms of Section 62 of the Municipal Finance Management Act No. 56 of 2003 (herein referred to as “MFMA”), the Accounting Officer is responsible for managing the financial affairs of Metsimaholo Local Municipality (MLM) and he/she must, for this purpose, inter alia:

- a) Take all reasonable steps to ensure that unauthorised, irregular; fruitless and wasteful expenditure and other losses are prevented; and
- b) Ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official or councillor of MLM who has committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA.

This is to ensure the effective, efficient and transparent systems of financial, risk management and internal control.

### **PART 1: PURPOSE AND OBJECTIVES**

- To provide for measures to identify any unauthorised, irregular expenditure or any fruitless and wasteful expenditure;
- To provide for frameworks to avoid any unauthorised expenditure, irregular expenditure or any fruitless and wasteful expenditure from being incurred;
- To provide for recovery of irregular expenditure or any fruitless and wasteful expenditure; and (does not cover recovery of unauthorized)
- To provide for reporting on any unauthorised, irregular expenditure or any fruitless and wasteful expenditure.

### **PART 2: ENABLING LEGISLATION**

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

- a) The Constitution of the Republic of South Africa, 1996, Act No 108 of 1996;
- b) The Municipal Finance Management Act, 2003, No 56 of 2003;
- c) The Remuneration of Public Office Bearers Act;

- d) Municipal Systems Act, 2000, Act No 32 of 2000;
- e) MFMA Circulars issued from time to time;
- f) Any other legislation, regulation or circular that may impact this policy; and

### **PART 3: LEGISLATIVE CONTEXT**

The Municipal Finance Management Act, no 56 of 2003 (MFMA) provides that each official of a local municipality exercising financial management responsibilities must 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.

Section 32 addresses the following matters concerning the liability of accounting officers as they relate unauthorised expenditure, irregular or fruitless and wasteful expenditure:

- if the office-bearer knowingly or after having been advised by the Accounting Officer that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure
- if the office-bearer or official of the municipality deliberately or negligently committed, made or authorised the irregular expenditure, is liable for that expenditure
- MLM must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure is authorised in an adjustments budget; or certified by the municipal council
- in the case of irregular or fruitless and wasteful expenditure, after investigation by a council committee, certified by the council as irrecoverable expenditure is written off by the council.
- If the Accounting Officer becomes aware that the council, the mayor or the executive committee has taken a decision which, if implemented, is likely to
- result in unauthorised, irregular or fruitless and wasteful expenditure, the Accounting Officer is not liable for any ensuing expenditure provided that

the Accounting Officer has informed the council, the mayor or the executive committee, in writing

- The Accounting Officer must report to the South African Police Service all cases of alleged irregular expenditure that constitute a criminal offence; theft or fraud that occurred in the municipality.

With regard to disclosure in term of financial management reporting, Section 125(2)(d) states that the notes to the annual financial statements of a local municipality must disclose particulars of:

- i. any material losses and any material irregular or fruitless and wasteful expenditure, including, any material unauthorised expenditure, that occurred during the financial year, and whether these are recoverable;
- ii. any criminal or disciplinary steps taken as a result of such losses or such unauthorised, irregular or fruitless and wasteful expenditures; and any material losses recovered or written off.

#### **PART 4: POLICY PRINCIPLES**

- The MPAC shall investigate allegations of unauthorized, irregular or fruitless and wasteful expenditure against any official/s who is employed full / part time by MLM.
- If the outcome of the investigation so warrants, disciplinary proceedings shall be instituted against the official(s) concerned in accordance with the provisions of Municipal Finance Management Act 56 of 2003 (MFMA).

Where appropriate, recovery of irregular, fruitless and wasteful expenditure shall be instituted by the local municipality in accordance with the MFMA.

## **PART 5: IDENTIFICATION OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE**

### **5.1 Unauthorised Expenditure**

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 may be regarded as unauthorized expenditure

Other specific cases which give rise to unauthorised expenditure, inter alia, are as follows: -

- Any overspending in relation to both the operational budget or the capital budget of the municipality
- Overspending in relation to each of the votes on both the operational budget and capital budget.
- Any overspending on non-cash items, for example depreciation, impairments, provisions and such expenses can be approved by the council or council committee because of the nature of the expenditure.
- Use of funds allocated to one department for purposes of another department or for purposes that are not provided for in the budget.
- Funds that have been designated for a specific purpose or project within a departments vote may not be used for any other purpose.
- Any use of conditional grant funds for a purpose other than that specified in the relevant conditional grant framework is classified as unauthorised expenditure.

Unauthorized expenditure may be:

- (i) Authorized by Council in an Adjustments Budget
- (ii) Certified by the municipal council as irrecoverable and written off by the Council after investigation by a council committee,

#### **Unforeseeable and Unavoidable Expenditure**

The Executive Mayor may in an emergency or other exceptional circumstances authorize unforeseeable and unavoidable expenditure for which no provision was made in an approved budget.

Such expenditure must be reported Municipal Council by the Executive Mayor at its next council meeting; and must be appropriated in an Adjustments Budget which must be passed within 60 days after the expenditure was incurred.

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 unauthorised.

## **5.2 Fruitless and Wasteful Expenditure**

Fruitless and Wasteful Expenditure is any expenditure that is incurred for which no benefit is received by the municipality and would have been avoided had reasonable care been exercised.

Interest on accounts payable, excluding interest on an overdraft facility, or other finance facility, is classified as fruitless expenditure.

## **5.3 Irregular Expenditure**

Irregular expenditure is expenditure incurred in contravention of, or that is not in accordance with the requirements of MFMA, and which has not been condoned in terms of section 170;

Expenditure incurred 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;

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

Expenditure incurred in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or any of the



local 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 local municipality which falls within the definition of "unauthorised expenditure"

Although a transaction or an event may trigger irregular expenditure, the municipality will only identify irregular expenditure when a payment is made, in other words, the recognition of irregular expenditure will be linked to a financial transaction. The amount recognized will be excluding value added tax that the municipality has recovered from SARS.

## **PART 6: CONSEQUENCES FOR IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE**

If the Accounting Officer becomes aware that the Council has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, the Accounting Officer is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the Accounting Officer has informed the Council, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure.

The Accounting Officer is liable for any unauthorised expenditure deliberately or negligently incurred.

If a member of the Council knowingly or after having been advised by the Accounting Officer that the expenditure is likely to result in unauthorised expenditure, instructed an official of the local municipality to incur the expenditure; the member of the Council will remain liable for the expenditure.

Any member of the Council or official of the municipality, who deliberately or negligently committed, made or authorised any irregular or fruitless and wasteful expenditure, is liable for that expenditure.

**PART 7: ACCOUNTING ALLOCATION OF UNAUTHORISED, IRREGULAR AND WASTEFUL EXPENDITURE**

If the unauthorised, irregular and fruitless and wasteful expenditure is found to be recoverable from the responsible official in full or in part, a debt must be recorded in the accounting records of the local municipality.

In cases where the debt or part thereof becomes irrecoverable after the initial recognition, such irrecoverable amount shall be written off, and appropriate recordings be made in the accounting records of the entity.

Revenue from the recovery of unauthorized, irregular, fruitless and wasteful expenditure is based on legislated procedures including those set out in the MFMA and is recognised when the recovery thereof from the responsible persons or officials is virtually certain.

**PART 8: DISCIPLINARY AND CRIMINAL CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**

The MPAC, Executive Mayor or Accounting Officer or delegated officials (as may be relevant) must promptly report to the SAPS all cases of alleged:

- a) Irregular expenditure that constitute a criminal offence; and
- b) Theft and fraud that occurred in the municipality.

The Executive 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:

- a) The charge is against the Accounting Officer; or
- b) The Accounting Officer fails to comply with the above paragraph.

## **PART 9: REPORTING**

Irregular expenditure should be disclosed under the applicable categories as follows:

- I. Not submitting the minimum quotations for acquiring goods and services
- II. Deviations not in line with the deviation criteria in terms of Supply Chain Management Regulations.
- III. Goods and service not provided for in terms of the amount quoted
- IV. Appointment of service provider who failed to submit declarations of interest.
- V. Appointment of service provider who failed to submit Tax clearance certificate.
- VI. Appointment of service providers who are not on the accredited prospective providers list and the listing requirements not met.
- VII. The preference point system not being applied when the threshold of procurement warrants that the preferential point system be applied
- VIII. Instances where invoices are deliberately split into smaller amounts so as to deliberately circumvent supply chain processes
- IX. Competitive bidding process not followed when such is warranted
- X. Continuing to contract with services providers in instances where the Contract/ SLA has expired and no valid approval for extension is in place
- XI. Procurement of goods and service were newspapers or website advertisements were not placed within the relevant time frames
- XII. Bids or quotations awarded to suppliers who are in the service of the State or principal shareholders or family of employers in the service of the state
- XIII. Payments to suppliers where total payments exceed the contract price, and no price variations have been approved.

- XIV. No supporting documentation (payment vouchers and/or tender documentation)
- XV. Contractor not registered with CIDB
- XVI. Unauthorised sole suppliers
- XVII. Bid specifications that do not specify the minimum threshold for local production and content as required by Preferential Procurement Regulations.

The Accounting Officer must promptly inform the Executive 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:

- a) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and
- b) the steps that have been taken:
  - To recover or rectify such expenditure; and
  - To prevent a recurrence of such expenditure

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

- a) The Finance Portfolio Committee
- b) Mayoral Committee on a monthly basis;
- c) Council
- d) MPAC
- e) Audit Committee

and reported monthly to the Mayoral Committee

All such expenditure is to be disclosed in the annual financial statements as required by the MFMA and treasury requirements; and

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

## **PART 10: REVIEW AND APPROVAL**

This policy and underlying strategies will be reviewed at least annually, or as necessary, to ensure its continued application and relevance.