

MARULENG MUNICIPALITY



UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

(FINANCIAL MANAGEMENT POLICY)

TABLE OF CONTENTS

1. INTRODUCTION
2. OBJECTIVE
3. ENABLING LEGISLATION
4. APPLICATION OF THIS POLICY
5. DEFINITIONS
6. UNAUTHORISED EXPENDITURE
7. IRREGULAR EXPENDITURE
8. FRUITLESS AND WASTEFUL EXPENDITURE
9. REPORTING OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE
10. MAINTAINING OF REGISTERS FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE
11. INVESTIGATIONS AND REGULARIZING OF UNAUTHORISED AND IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE
12. DISCIPLINARY AND CRIMINAL CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE
13. RECOVERY OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE
14. CONSEQUENCES OF NON – COMPLIANCE
15. PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE
16. EFFECTIVE DATE OF THIS POLICY
17. REVIEWING DATE OF THIS POLICY

ABBREVIATIONS / ACRONYMS

Except if otherwise stated in this policy, the following abbreviations and acronyms will represent the following word:

AFS – Annual Financial Statement

CFO – Chief Executive Officer

COO – Chief Operational Officer

MBRR – Municipality Budget Rules and Regulations

MIG – Municipal Infrastructure Grant

MLM – Maruleng Local Municipality

MFMA – Municipal Finance Management Act

MPAC – Municipal Public Account Committee

MM or AO – Municipal Manager or Accounting Officer

MSA – Municipal Systems Act, No. 32 of 2000

MSA – Municipal Structures Act No. 117 of 1998

PFMA – Public Finance Management Act

RPOBA – Remuneration of Public Office Bearers Act

SAPS – South African Police Service

1. INTRODUCTION

- 1.1 In terms of section 62 of the Municipal Finance Management Act No. 56 of 2003 (herein referred to as MFMA) states, the accounting officer is responsible for managing the financial affairs of the municipality and he/ she must, for this purpose, inter alia:
- a) Take all reasonable steps to ensure that unauthorized, irregular, fruitless and wasteful expenditure and other losses are prevented; and
 - b) Ensure that disciplinary action or, when appropriate, criminal proceedings are instituted against any official or councilor of MLM who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 4 of the MFMA.
- 1.2 This is to ensure effective, efficient and transparent systems of financial, risk management and internal controls.

2. OBJECTIVES

- 2.1 This document sets out MLM's policy and procedures with regards to unauthorized, irregular, fruitless and wasteful expenditure.
- 2.2 This policy aims to ensure that, amongst other things;
- a) Unauthorized, irregular, fruitless and wasteful expenditure is detected, processed, recorded and reported in a timely manner;
 - b) Officials or councilors have a clear and comprehensive understanding of the procedures they must follow when addressing unauthorized, irregular, fruitless and wasteful expenditure;
 - c) MM's resources are managed in compliance with the MFMA, the municipal regulation and other relevant legislation; and
 - d) All officials and councilors are aware of their responsibilities in respect of unauthorized, irregular, fruitless and wasteful expenditure.
 - e) Ensure transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of MLM

3. ENABLING LEGISLATION

The following enabling legislation sets the precedent for the development of MLM unauthorized, 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 No. 56 of 2003
- c) The Remuneration of Public Office – Bearers Act
- d) The Municipal Systems Act No. 32 of 2000
- e) MFMA Circular 68
- f) The Municipal Structures Act No. 117 of 1998
- g) Any other legislation, regulation or circular that may impact this policy

4. APPLICATION TO THE POLICY

4.1. This policy applies to all municipal officials and councilors of MLM

4.2. This policy should be read in conjunction with the following:

- a) Delegation of Authority
- b) Policy on financial misconduct
- c) Breach of the Code of Conduct for Municipal Staff members, and
- d) Breach of the Code of Conduct for Councilors

4.3. Municipal Official and Councilors must ensure in all instances of unauthorized and irregular expenditure as well as fruitless and wasteful expenditure is presented where possible, and is detected and reported in a timely manner.

5. DEFINITIONS

Except if otherwise indicated;

“Councilors” means members of the municipal council of MLM

“Municipal Manager” means a person appointed in terms of section 82(1)(a) or (b) of the Municipal Structures Act

“Officials” in relation to MLM, means –

- a) An employee of the municipality or municipal entity
- b) A person seconded to MLM or to work as a member of the staff of the municipality or municipal entity
- c) A person contracted by a MLM to work as a member of the staff of MLM or otherwise than as an employee

“Mayor” in relation to –

- a) A municipality with an executive mayor, means the councilor elected as the executive mayor of the municipality in terms of section 55 of the Municipal Structures Act; or
- b) A municipality with an executive committee, means the councilor elected as the mayor of the municipality in terms of section 48 of that Act

“Senior Manager” has the meaning assigned to it in section 1 of the MFMA and in relation to MLM, refer to Directors, Managers and CFO

“Political Office –Bearer” means the speaker, Mayor or a member of the executive committee as referred to in the Municipal Structures Act

- a) The Speaker, Executive Mayor, Deputy Executive Mayor, Mayor, Deputy Mayor or a member of the executive or mayoral committee of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act; or
- b) A Councilor referred to in section 57(1) of this Act.

“Political Structure” in relation to a municipality, means –

- a) The Council of a municipality, or

- b) Any committee or other collective structure of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act

“National Treasury” means the National Treasury established by section 5 of the Public Finance Management Act (PFMA)

MEC for Local Government” means the member of the executive council of a province who is responsible for local government in that province

“Local Municipality” means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls and which is described in section 155(1) of the Constitution as Category B municipality.

“Financial misconduct” means any misappropriation, mismanagement, waste or theft of the finances of the municipality, and also include any form of financial misconduct specifically set out in section 171 and 172 of the Act respectively.

“Fruitless and Wasteful Expenditure” means expenditure that was made in vain and would have been avoided had reasonable care been exercised.

“Irregular Expenditure” 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 this Act, and which has not been condoned 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 or that is not in accordance with, a requirement of the supply chain management of the municipality or any of the municipality’s by – laws giving effect to such policy, and which has not been condoned in terms of such policy by- laws. But
- e) Excludes expenditure by a municipality which falls within the definition of unauthorized expenditure

“Overspending” means,

- a) In relation to the budget of a municipality, means causing the operation or capital expenditure incurred by 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;
- 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.

“Unauthorized Expenditure” in relation to a municipality, means

Any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11 (3) of the Act 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; or
- f) A grant by MLM otherwise than in accordance with the MFMA.

"Vote" means

- a) One of the main segments into 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 specific the total amount that is appropriated for the purposes of the department or functional areas concerned.

6. UNAUTHORIZED EXPENDITURE

6.1 Maruleng Local Municipality may incur expenditure only in terms of an approved budget and within the limits of the appropriated for different votes in an approved budget.

6.2 Expenditure incurred within the ambit of MLM's virement policy is not regarded as unauthorized expenditure

6.3 Any expenditure that has not been 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 by the MFMA is regarded as unauthorized expenditure.

6.4 Unauthorized Expenditure should include;

- a) Any overspending in relation to both the operational budget and budget of the municipality
- b) Overspending in relation to each of the votes on both the operational and capital budget
- c) Use funds allocated to one department for the purposes of another department or for purpose that are not provided for in the budget.
- d) Funds that has been designated for a specific purpose or project within a departments vote may not be used for any other purpose.
- e) Any use of conditional grant funds for a purpose other than that specified the relevant conditional grant framework is calculated as unauthorized expenditure
- f) Any grant to an individual or household unless is in terms of the municipality's indigent policy and bursary scheme;

g) Unforeseen and unavoidable expenditure not authorized within an adjustments budget within 60 days after the expenditure was incurred, and

h) Any overspending on non – cash items, such as depreciation or impairments, provisions

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

6.6 Expenditure that are not classified as unauthorized expenditure.

Unauthorized, Irregular or Fruitless and Wasteful Expenditure section 32 of the MFMA;

1. Without limiting liability in terms of the common law or other legislation-
 - a) A political office –bearer of a municipality is liable for unauthorised expenditure if that office –bearer knowingly or even after been advised by the Accounting Officer of MLM that the expenditure is likely to result in unauthorised expenditure
 - b) The Accounting Officer is liable for unauthorised expenditure deliberately or negligently incurred by the AO, subject to subsection (3)
 - c) Any political office – bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure is liable for that expenditure
 - d) Any political office – bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.

Given the definition of unauthorised expenditure, the following are examples of expenditure that are NOT unauthorized expenditure:

i) Any over – collection on the revenue side of the budget as this is not an expenditure; and

ii) Any expenditure incurred in respect of:

- Any of the transactions mentioned in section 11(1)(a) to (j) of the MFMA.
- Re – allocation of funds and the use of such funds in accordance with a council approved virement policy;
- Overspending of an amount allocated by standards classified on the main budget table A2 (Budgeted Financial Performance: Revenue and expenditure by standard classification), as long as it does not result in over spending of a “vote” on the main budget table A3 (Budgeted Financial Performance: revenue and expenditure (read in conjunction with supporting Table SA1) of the MBRR; and
- Overspending of an amount allocated by standard classification on the main budget Table A5 (Budgeted Capital Expenditure by “vote” on the main budget Table A5)

6.6.1. Money withdrawn from a bank account under the following circumstances, without appropriation in terms of an approved budget, is not regarded as unauthorised expenditure

a) To defray unforeseen / unavoidable expenditure circumstances strictly in accordance with section 29(1) of the MFMA: Consequences of failure to approve a budget on the start of the budget year;

- b) To defray unforeseen / unavoidable expenditure circumstance strictly in accordance with section 29(1) of the MFMA: Unforeseen and unavoidable expenditure
- c) Re – allocation of funds and the use of such in accordance with a council approved virement policy
- d) Expenditure incurred from a special bank account for relief, charitable or trust purpose provided of course that is done strictly in accordance with section 12 of the MFMA: Relief, charitable, trust or other funds
- e) To pay over to a person or organ of state money received by MLM on behalf of that person or organ of state, including-
 - (i) Money collected by MLM on behalf of that person or organ of state by agreement; or
 - (ii) Any insurance or other payments received by MLM on behalf of that person or organ of state
- f) To refund money incorrectly paid to the municipal bank account
- g) To refund guarantees, sureties and security deposits
- h) For cash management and investment purpose in accordance with section 13: Cash Management and Investment; and
- j) To defray increased expenditure in terms of section 31: Shifting of funds between multi – year’s appropriation.

6.6.2. Any expenditure approved in terms of the Municipal Budget Rules and Regulations

7. IRREGULAR EXPENDITURE

7.1) Irregular expenditure is the expenditure that is contrary to the Municipal Finance Management Act (Act No. 56 of 2003), the Municipal Systems Act (Act No.32 of 2000) and Public Office – Bearers Act (Act NO. 20 of 1998) or is in contravention of the municipality’s supply chain management policy.

7.2) Irregular expenditure is actually expenditure that is in violation of some or other procedural / legislative requirements as specified in the MFMA.

7.3) Irregular expenditure excludes unauthorized expenditure

7.4) 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.

7.5) 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.

7.6) Remuneration of Councillors

7.6.1) payments to MLM Councilors cannot exceed the upper limits of the salaries, allowances and benefits for those councillors as promulgated in the Public Officers Act.

7.6.2) Any remuneration paid or given in cash or any kind to a councillor or as a member of a political structure of MLM otherwise than in accordance with 7.6.1 including bonuses, bursaries, loans, advances or any other benefits, must be classified as irregular expenditure.

7.7) Irregular on staff appointments

7.7.1. No person may be employed in MLM unless the post to which he or she is appointed, is provided for in the MLM's staff establishment of the municipality as approved by council.

7.7.2. Any person who takes a decision contemplated in subparagraph (7.7.1) knowing that such decision is unlawful, will be held personally liable to any irregular or fruitless and wasteful expenditure that the municipality may incur as a result of such decision.

7.8) 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.

8. FRUITLESS AND WASTEFUL EXPENDITURE

8.1 All officials and councillors 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.

8.2 Fruitless and Wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised.

8.3 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.

8.4 Expenditure incurred that has been budgeted for (authorised) and was not regarded as irregular expenditure could be classified as fruitless and wasteful expenditure.

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

i, it was made in vain (meaning the municipality did not receive value for money) and;

ii, And could have been avoided had reasonable steps care been exercised (meaning that official or councillor concerned did not carelessly or negligently cause the expenditure to be incurred by the municipality furthermore another official or councillor under the same circumstances would not have been incurring the same expenditure)

8.6 in determining whether expenditure is fruitless or 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

- 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? And,

- is the expenditure being incurred at the right price, right quality, right time and right quantity?

8.7 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.

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

9.1 Reporting of unauthorised, irregular, fruitless and wasteful expenditure must be done at the appropriate level, as this could constitute financial misconduct as follows;

- a) A councillor of a municipality, must be reported to the speaker of the council;
- b) The Municipal Manager and Speaker, must be reported to the Mayor
- c) Senior Manager or Chief Financial Officer and all officials below senior management of the municipality, must be reported to the Municipal Manager;
- d) All cases of prohibited expenditure reported as per a),b) and c) above must be referred to MPAC for investigation are frivolous, vexatious, speculative or obviously unfounded; and

9.2 All reports made by officials and councillors must be treated with utmost confidentiality.

9.3 The MM must promptly inform the Mayor, the MEC for local government in the province and also 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 following steps must be taken:
 - To recover or rectify such expenditure; and
 - To prevent recurrence of such expenditure

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

- a) The Finance Portfolio Committee on a monthly basis
- b) Executive Committee on a monthly basis
- c) Council on quarterly basis
- d) MPAC on a quarterly bases; and
- e) Audit Committee on a quarterly basis

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

- a) All confirmed unauthorised, irregular, fruitless and wasteful expenditure must be recorded in a separate account, in the accounting system of MLM, created for each of the above types of expenditure;
- b) All such expenditure is disclosed in the AFS as required by the MFMA and treasury regulations; and
- c) Details pertaining to unauthorised, irregular, fruitless and wasteful expenditure must be disclosed in the Municipality's Annual Report.

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

10.1 Council must maintain a register of all incidents of unauthorised, irregular, fruitless and wasteful expenditure;

- a) This register will be maintained by the CFO for all officials other than CFO and MM;
- b) A separate register must be maintained by the MM for expenditure incurred by the CFO;
- c) A separate register must be maintained by the Mayor for expenditure incurred by the MM; and
- d) The Speaker will maintain a register for expenditure incurred by the Mayor and Councillors

10.2 These registers must be updated on a monthly basis

11. INVESTIGATION OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

11.1 MPAC must institute an investigation of all prohibited expenditure reported in terms of clause 9.1 (d) above,

Section 32 (7):also states that The council of a municipality must take all reasonable steps to ensure that all cases referred to in subsection (6) are reported to the South African Police Service (SAPS) if—

- (a) the charge is against the accounting officer; or
- (b) the accounting officer fails to comply with that subsection.

Section 32(6) of the MFMA requires the Mayor to report to SAPS any alleged unauthorised expenditure, theft and fraud.

Section 32 (2) b: in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

12. DISCIPLINARY AND CRIMINAL CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

12.1 The MPAC, Mayor or Municipal Manager or delegated officials (as may be relevant) must promptly report to the SAPS all cases alleged

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

12.2 The Mayor must take all responsible steps to ensure that all cases referred to in the above paragraph are reported to the South African Police Service if;

- a) The charges is against the Municipal Manager; or
- b) The Municipal Manager fails to comply with the above paragraph.

12.3 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, fruitless and wasteful expenditure.⁴

13. RECOVERY OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

13.1 The MM or delegated person must recover any unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure is as per section 32(2) of the MFMA-

a) In a case of unauthorised expenditure, is-

- i) Authorised in adjustment budget; or
- ii) Certified by the municipal council, after investigation by a council committee as irrecoverable and written off by the council

b) In a case of Irregular or Fruitless and Wasteful Expenditure is, after investigation by a council committee, certified by the council as irrecoverable and written off by council

13.2 Irregular expenditure resulting from breaches of the Public Office – Bearers Act must be recovered from the council to whom it was paid.

13.3 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 Councillor or Official pay the amount within 30 days or in reasonable instalments.

13.4 Without limiting liability in terms of the common law or other legislation, the MM must recover such expenditure, in full, from the official or councillor where:

- a) In the case of a councillor, the councillor knowing or after having been advised by the MM that the expenditure is likely to result in unauthorised, irregular, fruitless and wasteful expenditure but still proceeded in instructing an official of MLM to incur such expenditure; and

b) In case of the official deliberately or negligently incurred such expenditure.

13.5 The fact that the council may have approved the expenditure for writing off or deemed it to be irrecoverable is no excuse, in;

a) 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; or

b) Recovery of such expenditure from liable personnel

13.6 If the official or councillor fails to make satisfactory payment arrangements or fails to honour payment arrangements made, the amount owed for prohibited expenditure must be recovered through the normal debt collection process of the MLM

14. CONSEQUENCES OF NON – COMPLIANCE

14.1 Any official or councillor who does not comply with their reporting duties in terms of this policy could be found guilty of financial misconduct.

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

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

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

15.2 The MM or Mayor must immediately take appropriate action to ensure that such a person is protected immediately after receiving such a 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. EFFECTIVE DATE OF THIS POLICY

This policy should be effective upon adoption by the council.

17. REVIEW OF THIS POLICY

This policy must be reviewed and updated:

- a) Annually in line with the budget cycle and submitted with the budget policies; or
- b) Sooner if new legislation, regulation or circulars are issued that will impact this policy.