



Mogale City

Local Municipality

Unauthorized, Irregular, Fruitless and Wasteful Expenditure Policy

Author/s: Ms. S. Van Niekerk
Ms. N. Mmemezi

Revised: May 2022

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

Table of Contents

ABBREVIATIONS/ACRONYMS.....	4
1 INTRODUCTION.....	5
2 DEFINITIONS	ERROR! BOOKMARK NOT DEFINED.
<u>3 PURPOSE OF THE POLICY.....</u>	<u>7</u>
4 OBJECTIVE.....	ERROR! BOOKMARK NOT DEFINED.
5 ENABLING LEGISLATION	ERROR! BOOKMARK NOT DEFINED.
6 APPLICATION OF THIS POLICY	8
7 UNAUTHORISED EXPENDITURE.....	9
7.1 UNAUTHORISED EXPENDITURE IDENTIFICATION	9
8 IRREGULAR EXPENDITURE	10
9 CONDONEMENT OF IRREGULAR EXPENDITURE.....	11
10 FRUITLESS AND WASTEFUL EXPENDITURE	12
<u>11 EXAMPLES OF UNAUTHORIZED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE.....</u>	<u>15</u>
12 PROCESS TO BE FOLLOWED WHEN DEALING WITH UNAUTHORISED EXPENDITURE, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	13
13 REPORTING ON UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE.....	16
14 MAINTAINING OF REGISTER FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	17
13 INVESTIGATION OF UNAUTHORISED AND IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE.....	17
14 RECOVERY UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	19

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

15 CONSEQUENCES OF NON-COMPLIANCE 20

**16 PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED
UNAUTHORIZED, IRREGULAR, FRUITLESS AND WASTEFUL
EXPENDITURE 20**

17 EFFECTIVE DATE 20

18 REVIEW OF POLICY 21

19 APPROVAL..... ERROR! BOOKMARK NOT DEFINED.

APPROVED

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

ABBREVIATIONS/ACRONYMS

Except if otherwise stated in this policy, the following abbreviations or acronyms will represent the following words:

CFO	- Chief Financial Officer
EM	- Executive Manager
MIG	- Municipal Infrastructure Grant
MCLM	- Mogale City Local Municipality
MFMA	- Municipal Finance Management Act, 2003, No. 56 of 2003
MPAC	- Mogale City Local Municipality's Municipal Public Account Committee
MM or AC	- Municipal Manager or Accounting Officer
SAPS	- South African Police Services
MSA	- Municipal Systems Act, 2000, No. Act 32 of 2000
Structures Act	- Municipal Structures Act, 1998, Act No 117 of 1998
RPOBA	- Remuneration of Public Office Bearers Act
Policy	- Policy on unauthorised, irregular, fruitless and wasteful expenditure
MBRR	- Municipality Budget Rules and Regulations

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

1. 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 Mogale City Local Municipality (MCLM) and he/she must, for this purpose, inter alia:

Take all reasonable steps to ensure:

- that unauthorised, irregular; fruitless and wasteful expenditure and other losses are prevented.
- that disciplinary or, when appropriate, criminal proceedings are instituted against any official or councillor of MCLM who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA.
- that the municipality has and maintains effective, efficient, and transparent systems of financial, risk management and internal control.

2. DEFINITIONS

Except if otherwise indicated:

“**Councillor**” means member of municipal council of MCLM and includes political office bearers.

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

“**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 Act.

“**Irregular expenditure**”, in relation to a municipality or municipal entity, means -

- (a) expenditure incurred by a municipality 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 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.

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

- (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 20 of 1998);
- (d) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of MCLM 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; or
- (e) excludes expenditure by a municipality which falls within the definition of 'unauthorised expenditure'.

"Official", in relation to a MCLM, means—

- (a) an employee of a MCLM.
- (b) a person seconded to MCLM or to work as a member of the staff of the MCLM; or
- (c) a person contracted by MCLM to work as a member of the staff of the MCLM or otherwise than as an employee.

"Overspending" means

- (a) In relation to the budget of a municipality, means causing the operational 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.

"Political Office Bearer" means the speaker, executive mayor, mayor, deputy mayor, or councillor or a member of the executive committee as referred to in the Municipal Structures Act.

Prohibited expenditure in relation to this policy refers to unauthorised, irregular, fruitless and wasteful expenditure.

"Senior Manager" has the meaning assigned to it in section 1 of the Act.

"Unauthorised expenditure", means –

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3), 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 MCLM otherwise than in accordance with the MFMA.

"Vote" means –

- (a) 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
- (b) which specifies the total amount that is appropriated for the purposes of the department or functional area concerned.

3. ENABLING LEGISLATION

3.1 The following enabling legislation sets the precedent for the development of MCLM's 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) Municipal Regulations on Financial Misconduct procedures and criminal proceedings,
- (f) MFMA Circular 68; and
- (g) Any other legislation, regulation or circular that may impact this policy.

4. PURPOSE OF THE POLICY

The purpose of this Policy is to ensure that Mogale City Local Municipality complies with Section 32 of the MFMA, Act 56 of 2003 and MFMA Circular

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

68 dealing with unauthorized, irregular, fruitless and wasteful expenditure issued by National Treasury.

5. OBJECTIVES

5.1 The objectives of the policy are

- (a) To prevent unauthorised, irregular, or fruitless and wasteful expenditure.
- (b) To ensure unauthorised, irregular, or fruitless and wasteful expenditure is detected, processed, recorded, and reported in a timely manner.
- (c) To ensure 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.
- (d) To ensure MCLM's resources are managed in compliance with the MFMA, the municipal regulations and other relevant legislation.
- (e) To inform officials and Political Office Bearers of all consequences of none-compliance in terms of unauthorised, irregular, fruitless and wasteful expenditure.
- (f) To outline procedures to manage such expenditures.
- (g) To provide examples of fruitless, wasteful and irregular expenditure.

6. APPLICATION OF THIS POLICY

- (a) This policy applies to all officials and Political Office Bearers of MCLM.
- (b) This policy should be read in conjunction with the following of MCLM:
- (c) Delegations of Authority.
- (d) Procedures for unauthorised, irregular, fruitless and wasteful expenditure.
- (e) Municipal Regulations on Financial Misconduct procedures and criminal proceedings,
- (f) MFMA Circular 68.
- (g) Breach of the Code of Conduct for Municipal Staff Members.
- (h) Breach of the Code of Conduct for Political Office Bearers.
- (i) 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. UNAUTHORISED EXPENDITURE

7.1 UNAUTHORISED EXPENDITURE IDENTIFICATION

7.1.1 Unauthorised expenditure includes:

- (a) Any overspending in relation to both the operational budget and capital budget of the municipality.
- (b) Overspending of the total amount appropriated for a vote on both the operational budget and capital budget.
- (c) Use of funds allocated to the functions of a department for purposes of another department's functions or for purposes that are not provided for in the budget.
- (d) Funds that have 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 in the relevant conditional grant framework is classified as unauthorised expenditure.
- (f) Any grant to an individual, unless it is in terms of the municipality's indigent policy, bursary scheme or grants-in policy.
- (g) Any overspending on non-cash items, for example depreciation, impairments, provisions.
- (h) Unforeseen and unavoidable expenditure not authorised in an adjustments budget within 60 days after the expenditure was incurred.
- (i) Any amount authorised by the mayor more than the monetary limits set in regulation 72 of the MBRR.
- (j) Unforeseen and unavoidable expenditure incurred where the reason for the mayor authorising such unforeseen and unavoidable expenditure does not fall within the ambit of regulation 71(1) and 71(2) of the MBRR.

7.2 Unauthorised expenditure does not include:

- (a) Expenditure incurred in terms of an approved budget or adjustments budget and within the limits of the amounts appropriated for the different votes in an approved budget or adjustments budget.
- (b) Expenditure incurred within the ambit of MCLM's virement policy.
- (c) Expenditure that is NOT classified as unauthorised expenditure.

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

- 7.3 Officials and Political Office Bearers must ensure that all instances of unauthorised expenditure is prevented, detected, and reported in a timely manner.
- 7.4 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 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].
 - (b) 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.
 - (c) re-allocation of funds and the use of such funds in accordance with a council approved virement policy.
 - (d) 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].
 - (e) To pay over to a person or organ of state money received by the MCLM on behalf of that person or organ of state, including—
 - (f) money collected by the MCLM on behalf of that person or organ of state by agreement. or
 - (g) any insurance or other payments received by the MCLM for that person or organ of state.
 - (h) To refund money incorrectly paid into a bank account.
 - (i) To refund guarantees, sureties, and security deposits.
 - (j) For cash management and investment purposes in accordance with section 13 [Section 13: Cash Management and Investments].
 - (k) To defray increased expenditure in terms of section 31 [Section 31: Shifting of funds between multi-year appropriations].
 - (l) Any expenditure approved in terms the Municipal Budget and Reporting Regulations (MBRR).

8. IRREGULAR EXPENDITURE

- 8.1 Irregular expenditure is expenditure incurred by a municipality that is

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

contrary to the Municipal Finance Management Act (Act No.56 of 2003) and has not been condoned in terms of Section 170 of the Act, the Municipal Systems Act (Act No.32 of 2000) and has not been condoned, and the Public Office Bearers Act (Act No. 20 of 1998) or is in contravention of Mogale City Local Municipality' Supply Chain Management (SCM) policy and any by- laws giving effect to the SCM policy.

- 8.2 In this context “expenditure” refers to any use of municipal funds that is in contravention of the following legislation:
- i. Municipal Finance Management Act (Act No.56 of 2003).
 - ii. Municipal Systems Act (Act No.32 of 2000).
 - iii. Public Office Bearers Act (Act No. 20 of 1998).
 - iv. Mogale City Local Municipality' Supply Chain Management (SCM) policy and any by-laws giving effect to this policy.
- 8.3 Irregular expenditure is actual expenditure that is in violation of some, or another procedural/legislative requirement of the Act as specified in 8.2 above.
- 8.4 Irregular expenditure excludes unauthorised expenditure.
- 8.5 Although a transaction or an event may trigger irregular expenditure, a Municipality will only identify irregular expenditure when a payment is made. The recognition of irregular expenditure must be linked to a financial transaction.
- 8.6 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.
- 8.7 Officials and Public Office Bearers must ensure that all instances of irregular expenditure is prevented, detected, and reported in a timely manner.

9. CONDONEMENT OF IRREGULAR EXPENDITURE

- 9.1 In terms of Section 32(2)(b) of the MFMA, irregular expenditure may only be written-off by Council if, after an investigation by a Council Committee, the irregular expenditure is certified as irrecoverable. In other words, writing-off is not a primary response, it is subordinate to the recovery processes, and may only take place if the irregular expenditure is certified by Council as irrecoverable, based on the findings of an investigation,
- 9.2 In terms of Section 170 of the MFMA, only the National Treasury may

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

condone non-compliance with a regulation issued in terms of the MFMA or a condition imposed by the Act itself.

- 9.3 The Municipal Council therefore has no power in terms of the MFMA to condone any act of non-compliance in terms of the MFMA or any of its regulations.
- 9.4 There is no provision in the MSA that allows for a contravention of the Act to be condoned. Expenditure incurred in non-compliance with any provision of the MSA should be addressed by the Municipal Manager to the Minister of Co-operative Governance and Traditional Affairs, for condonement,
- 9.5 There is no provision in the Public Office Bearers Act that allows for a contravention of the Act to be condoned. Such expenditure incurred in non-compliance with any provision of the POBA cannot be written off and must be recovered from the political Office Bearer concerned.
- 9.6 A Council may condone a contravention of the Council approved 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 8.2 applies.

10. FRUITLESS AND WASTEFUL EXPENDITURE

- 10.1 The Municipal Council, the Mayor and the Accounting Officer have a fiduciary responsibility to ensure that the municipal resources are used in the best interests of the municipality and the local community.
- 10.2 All officials and political office bearers must always act cautiously when spending public money and ensure that they abide by the public administration and accountability principles which are to promote “efficient, economic and effective use of resources and the attainment of value for money”.
- 10.3 Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised.
- 10.4 An expense is only fruitless and wasteful in terms of this policy if:
 - (a) It was made in vain (meaning that the municipality did not receive value for money spent or for the use of resources), and.

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

- (b) would have been avoided had reasonable care been exercised (Meaning that the official or Public Office Bearer concerned did not carelessly or negligently cause the expenditure to be incurred by the municipality furthermore another official or Public Office Bearer under the same circumstances would not have been able to avoid incurring the same expenditure).
- 10.5 In determining whether expenditure is fruitless and wasteful, officials and Public Office Bearers must apply the requirement of reasonable care as an objective measurement to determine whether a expenditure was fruitless and wasteful, that is:
 - (a) Would the average man (in this case the average experienced official or Public Office Bearer) have incurred the expenditure under exactly the same conditions or circumstances?
 - (b) Is the expenditure being incurred at the right price, right quality, right time, and right quantity?
- 10.6 Expenditure incurred that has been budgeted for (authorised) and was not regarded as irregular expenditure could be classified as fruitless and wasteful expenditure.
- 10.7 Officials and Public Office Bearers must ensure that all instances of fruitless and wasteful expenditure are prevented, detected and reported in a timely manner.

11. PROCESS TO BE FOLLOWED WHEN DEALING WITH UNAUTHORISED EXPENDITURE, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

- 11.1 If any official or councillor of the Municipality is certain or has reason to believe that an expense that has been incurred by the Municipality is either fruitless and wasteful, irregular or unauthorised, such official or councillor should within 5 working days report such expenditure to the Executive Manager, Chief Financial Officer in their respective Department and provide reasons or any relevant details thereof.
- 11.2 The Executive Manager (EM) and Chief Financial Officer (CFO) should consider whether the expenditure reported to him/her in term of sub paragraph 10.1 and any other expenditure that they become aware of which qualifies as either fruitless and wasteful, irregular or

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

unauthorised expenditure and perform any investigations necessary to arrive at a decision on classification of the expenditure. They should then within 5 working days after the end of each month prepare and submit to the Chief Financial Officer a complete report on all expenditure reported to them in terms of this Policy regardless of having either qualified or disqualified the expenditure from either being fruitless and wasteful, irregular or unauthorised.

- 11.3 The Chief Financial Officer should compile a comprehensive report of all expenditure reported by the various departments for the quarter per sub paragraph 10.2 above and include any fruitless and wasteful, irregular and unauthorised expenditure of Financial Management Department and should also provide his comments on the correctness of the classification of the expenditure by the Departments and submit a full report to the Municipal Manager within 5 working days after the end of each month.
- 11.4 The Council must forward a report on all alleged fruitless and wasteful, irregular and unauthorised expenditure for investigation and recommendations to MPAC (Municipal Public Accounts Committee) within 5 working days after receipt of the report from the CFO unless those allegations are frivolous, vexatious, speculative or obviously unfounded. The report should also include details of any action taken by the MM with respect to the alleged fruitless and wasteful, irregular and unauthorised expenditure.
- 11.5 If the MM becomes aware that Council, the Mayor or the Mayoral Committee of the municipality, as the case may be, has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, the MM is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the MM has informed Council, the Mayor or the Mayoral Committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure.
- 11.6 Any official or Councillor who becomes aware or has reason to believe that either the MM, CFO, EM, other official or Councillor of the Municipality has deliberately or negligently made, permits, instructed another official of the Municipality to incur fruitless and wasteful, unauthorised and irregular expenditure and may have further provided

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

incorrect or misleading information or withholds information which is to be submitted in terms of the MFMA or this Policy must report them suspicions directly to MPAC.

- 11.7 MPAC must investigate all allegations of fruitless and wasteful, irregular and unauthorised expenditure contained in the MM's Report or reported to MPAC per clause 10.6 above promptly and make recommendations to Council.
- 11.8 MPAC must investigate all allegations of financial misconduct reported to it against the MM, the CFO, EMs or other officials of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and
- 11.9 Council must consider the Report of MPAC and its recommendations and either authorise unauthorised expenditure, certify expenditure as irrecoverable and approve the writing off thereof or instruct the MM to recover the expenditure in full from the responsible official(s) or Councillor(s)

12. EXAMPLES OF UNAUTHORIZED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

12.1 Unauthorised Expenditure

12.1.1 Overspending of Councils Approved Budget

12.2 Irregular Expenditure

- 12.2.1 Advertising a Tender Ad for less than 30 days,
- 12.2.2 Awarding a Tender to a Tenderer where his Tax Clearance Certificate is not in order.
- 12.2.3 Where the Municipality have exceeded the 15% Variation amount as indicated in the MFMA Circular 62
- 12.2.4 Awarding a Tender to a Tenderer who did not qualify but was awarded the tender anyway.
- 12.2.5 Where the Tender has expired, the Municipality continues to allow the Tenderer to provide the services as per the expired tender,

12.3 Fruitless and Wasteful Expenditure

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

- 12.3.1 Procuring of goods and services that are not beneficial to the municipality.
- 12.3.2 Cost of goods and services that are in excess of what would have been the case have proper procedures been followed.
- 12.3.3 Renting of property when sufficient and appropriate unoccupied property is owned by the Municipality.
- 12.3.4 Mismanagement of funds.
- 12.3.5 Incurring penalties and interests on late payments of Creditors.
- 12.3.6 Exuberant costs on Parties, Entertainment,
- 12.3.7 Payment of funeral expenses for Officials and Public Office Bearers.

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

- 13.1 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 political office-bearer of a municipality and the Municipal Manager must be reported to the MPAC.
 - (b) Executive Managers or the Chief financial officer of a Municipality, must be reported to the Municipal Manager.
- 13.2 Officials below executive management level of the municipality must be reported to their respective Executive Manager or CFO as the case maybe.
- 13.3 All cases of prohibited expenditure reported as per a), b) and c) above must be referred to MPAC for investigation unless the allegations are frivolous, vexatious, speculative, or obviously unfounded.
- 13.4 All reports made by officials, councillors or political office bearers must be treated with utmost confidentiality.
- 13.5 The MM 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:
 - (a) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure. and the steps that have been taken:
 - (b) To recover or rectify such expenditure. and
 - (c) To prevent a recurrence of such expenditure.
- 13.6 All expenditure classified as unauthorised, irregular, fruitless and

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

wasteful expenditure must be reported to:

- (a) The Finance Portfolio Committee on a quarterly basis.
- (b) Mayoral Committee on a quarterly basis.
- (c) Council on a quarterly basis.
- (d) Audit Committee on a quarterly basis.

13.7 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 MCLM, created for each of the above types of expenditure.
- (b) All such expenditure is disclosed in the annual financial statements as required by the MFMA and treasury requirements.
- (c) Details pertaining to unauthorised, irregular, fruitless and wasteful expenditure must be disclosed in the Municipality's Annual Report.

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

14.1 The CFO must maintain a register of all confirmed incidents of unauthorised, irregular, fruitless and wasteful expenditure. These registers must be updated on a quarterly basis.

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

15.1 All expenditure alleged to have been unauthorised, irregular, fruitless and wasteful expenditure must be referred to a MPAC for investigation as per sub paragraph 10.4 and 10.6 above.

15.2 MPAC must either refer the matter to the MCLM's Internal Audit Department or an appropriate investigative body for investigation, to determine:

- (a) Whether the expenditure is in fact unauthorised, irregular, fruitless and wasteful?
- (b) Whether grounds exist for a charge of financial misconduct to be laid against the official liable or political office bearer for the expenditure?

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

- 15.3 Once the nature of the expenditure is confirmed as unauthorised, irregular, fruitless and wasteful expenditure, MCLM must institute the necessary procedures which could include disciplinary as well criminal proceedings.
- 15.4 If, after having followed a proper investigation, 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.
- 15.5 If the unauthorised, 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:
- (a) Financial misconduct in terms of section 171 of the MFMA: in the case of an official that deliberately or negligently:
 - (i) contravened a provision of the MFMA which resulted in irregular expenditure. or
 - (ii) made, permitted, or authorised an irregular expenditure (due to non-compliance with any of legislation mentioned in the definition of irregular expenditure).
 - (b) 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 constitutes a breach of the Code; and
 - (c) 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.
- 15.6 The Council, Mayor or Municipal Manager or delegated officials (as may be relevant) must promptly report to the SAPS all cases of alleged:
- (a) Irregular expenditure that constitutes a criminal offence. and
 - (b) Theft and fraud that occurred in the municipality.
- 15.7 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:
- (a) The charge is against the MM. or

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

(b) The MM fails to comply with the above paragraph.

16. RECOVERY UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

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

- (a) in the case of unauthorised expenditure, is
- (b) authorised in an adjustment budget, or
- (c) certified by the municipal council, after investigation by MPAC as irrecoverable and written off by council; and

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

16.3 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 who might not have been responsible for making, permitting or authorising the irregular expenditure.

16.4 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.

16.5 Without limiting liability in terms of the common law or other legislation,

- (a) MCLM must recover any such expenditure, in full, from official or Public Office Bearer where:
 - (b) 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 MCLM to incur the expenditure.

(c) In case of the official, the official deliberately or negligently incurred such expenditure.

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY

- 16.6 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.
 - (b) Recovery of such expenditure from such person.
- 16.7 If the person fails to comply with the request, the matter must be recovered through the normal debt collection process of the municipality.

17. CONSEQUENCES OF NON-COMPLIANCE

- 17.1 Any official, councillor or political officer bearer not complying with this policy could be found guilty of Financial Misconduct.
- 17.2 Any councillor or political office bearer of MCLM will be committing an act of financial misconduct if that councillor deliberately or negligently makes or permits, or instructs another official of MCLM to make, an unauthorised, irregular or fruitless and wasteful expenditure.

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

- 18.1 If any official or councillor who 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 threats, victimisation or intimidation to the MM or the Mayor where applicable.
- 18.2 The MM or Mayor must immediately take appropriate action to ensure that protection of the official or councillor after receiving the above report.
- 18.3 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.

19. EFFECTIVE DATE

This policy will be effective upon adoption by Council.

20. REVIEW OF 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.

SPEAKER OF MOGALE CITY LOCAL
MUNICIPALITY

Date