



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

MANTSOPA LOCAL MUNICIPALITY

The council of *Mantsopa Local Municipality* resolved to adopt the Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy on 14 August 2020.

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1. DEFINITIONS

In this policy, except if otherwise indicated:

“Councillor” means member of the municipal council of Mantsopa Local Municipality.

“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 act of financial misconduct referred to in section 171 of the MFMA committed by an official of a municipality.

“Irregular expenditure”, means:

- a) 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;
- 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 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 20 of 1998); or
- 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 Mantsopa Local 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 or by-law; but
- e) excludes expenditure by a municipality which falls within the definition of unauthorised expenditure.

“Official”, in relation to Mantsopa Local Municipality means:

- a) an employee of Mantsopa Local Municipality;
- b) a person seconded to Mantsopa Local Municipality or to work as a member of the staff of the Mantsopa Local Municipality; or
- c) a person contracted by Mantsopa Local Municipality to work as a member of the staff of the Mantsopa Local Municipality 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.

“Policy” means policy on unauthorised, irregular, fruitless and wasteful expenditure.

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

“Prohibited expenditure” in relation to this policy means unauthorised, irregular, fruitless and wasteful expenditure;

“Senior Manager” means a manager referred to in section 56 of the Municipal Systems Act.

“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; or
- f) a grant by Mantsopa Local Municipality otherwise than in accordance with the MFMA.

Voteⁿ 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.

2. ABBREVIATIONS

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

CFO	-	Chief Financial Officer
MBRR	-	Municipal budget and reporting regulations
MFMA	-	Municipal Finance Management Act, 2003, No. 56 of 2003
MPAC	-	Municipal Public Account Committee
SAPS	-	South African Police Services
UIF &W		Unauthorised, Irregular, Fruitless and Wasteful Expenditure

3. INTRODUCTION

(1) In accordance with section 32 of the Municipal Finance Management Act No. 56 of 2003 (the “MFMA”), read together with MFMA Circular No. 68, the Council has a duty to:

- a) Prevent unauthorised, irregular, fruitless and wasteful expenditure;
- b) Identify and investigate unauthorised, irregular, fruitless and wasteful expenditure; and
- c) Address all instances of unauthorised, irregular, fruitless and wasteful expenditure appropriately in accordance with the MFMA.

(2) 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:

- 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 criminal proceedings are instituted against any official or councillor of Mantsopa Local Municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA.
- (3) Officials and councillors must ensure that all instances of fruitless and wasteful expenditure are prevented, detected and reported in a timely manner.
- (4) This is to ensure the effective, efficient and transparent systems of financial, risk management and internal control.

4. OBJECTIVE

1. This document sets out the policy and procedures of [Mantsopa Local Municipality] with regards to treatment of unauthorised, irregular, fruitless, and wasteful expenditure in terms of Section 32 of the MFMA, read together with MFMA Circular No. 68.
2. This policy aims to ensure that, amongst other things that
 - a) Unauthorised, irregular, or fruitless and wasteful expenditure is prevented;
 - b) Unauthorised, irregular, or fruitless and wasteful expenditure is detected, processed, recorded, and reported in a timely manner;
 - c) Officials and councillors of Mantsopa Local Municipality have a clear and comprehensive understanding of the procedures they must follow when addressing unauthorised, irregular, fruitless, and wasteful expenditure;
 - d) Resources of Mantsopa Local Municipality are managed in compliance with the MFMA, the municipal regulations and other relevant legislation; and
 - e) All officials and councillors of Mantsopa Local Municipality are aware of their responsibilities in respect of unauthorised, irregular, fruitless, and wasteful expenditure.

5. ENABLING LEGISLATION

(1) The following enabling legislation sets the precedent for the development of Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy of Mantsopa Local Municipality:

- 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 Structures Act No. 117 of 1998
- f) Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings
- g) Municipal Budget and Reporting Regulations;
- h) MFMA Circular 68, and
- i) Any other legislation, regulation, circular or guide that may impact this policy;

6. APPLICATION OF THIS POLICY

(1) This policy applies to all officials and councillors of Mantsopa Local Municipality.

(2) This policy should be read in conjunction with the following documents of Mantsopa Local Municipality:

- a) Delegations 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 Councillors.

7. PROCESS TO BE FOLLOWED WHEN DEALING WITH UNAUTHORISED EXPENDITURE

(1) All cases of unauthorised expenditure must be referred to MPAC for investigation. MPAC must, after investigation, make a recommendation to council for the authorisation, recovery or write off the unauthorised expenditure in terms of section 32 (2) (a) of the MFMA

(1) In considering the authorisation of unauthorised expenditure, council must consider the following factors:

- (a) Has the matter been referred to Council for a determination and decision?
- (b) Has the nature, extent, grounds and value of the unauthorised expenditure been submitted to Council?
- (c) Has the incident been referred to MPAC for investigation and recommendations?
- (d) Has it been established whether the accounting officer or official or public office bearer that made, permitted or authorised the unauthorised expenditure acted deliberately or in a negligent or grossly negligent manner?
- (e) Has the accounting officer informed Council, the mayor or the executive committee that a particular decision would result in an unauthorised expenditure as per section 32(3) of the MFMA?
- (f) Are there good grounds shown as to why an unauthorised expenditure should be authorised? For example:
 - the mayor, accounting officer or official was acting in the best interests of the municipality and the local community by making and permitting unauthorised expenditure;
 - the mayor, accounting officer or official was acting in good faith when making and permitting unauthorised expenditure; and
 - the municipality has not suffered any material loss as a result of the action.

8. ADJUSTMENTS BUDGETS TO AUTHORISE UNAUTHORISED EXPENDITURE

(1) Depending on the responses to the questions in 7(2) above, council may authorise unauthorised expenditure in an adjustments budget, in terms of Sections 28(c) and 28(g) of the MFMA, read together with regulations 23(1), 23(2), 23(4) and 23(6) of the MBRR:

(a) ***Adjustments budget for unforeseen and unavoidable expenditure:***

- (i) An adjustments budget to allow council to provide *ex post* authorisation for unforeseen and unavoidable expenditure that was authorised by the mayor in terms of section 29 of the MFMA must be tabled in council at the “first available opportunity” or within the 60 days after the expenditure was incurred (see section 29(3) of the MFMA).
- (ii) Should either of these timeframes be missed, the unforeseen and unavoidable expenditure must be treated in the same manner as any other type of unauthorised expenditure, and may still be authorised in one of the other adjustments budgets process described below.

(b) ***Main adjustments budget:***

- (i) In terms of regulation 23(6)(a) of the MBRR, council may authorise unauthorised expenditure in the adjustments budget which may be tabled in council “at any time after the mid-year budget and performance assessment have been tabled in the council, but not later than 28 February of the current year”.
- (ii) Therefore unauthorised expenditure that occurred in the first half of the current financial year may be authorised by council in this adjustments budget. Where unauthorised expenditure from this period is not identified or investigated in time to include in this adjustments budget, it must be held over to the following adjustments budget process noted below.

(c) Special adjustments budget to authorise unauthorised expenditure:

- (i) In terms of regulation 23(6)(b) of the MBRR, council may authorise unauthorised expenditure in a special adjustments budget tabled in council when the mayor tables the annual report in terms of section 127(2) of the MFMA (see MFMA Circular 63 for clarification of the time period referred to in section 127(2) of the MFMA).
- (ii) This special adjustments budget may only deal with unauthorised expenditure from the previous financial year which the council is being requested to authorise in terms of section 32(2)(a)(i) of the Act.
- (iii) This special adjustments budget therefore deals with:
 - a) unauthorised expenditure that occurred in the first half of the previous financial year that was not included in the main adjustments budget or that was included but referred back for further investigation or further information;
 - b) unauthorised expenditure that occurred in the second half of the previous financial year, and
 - c) any unauthorised expenditure identified by the Auditor-General during the annual audit process.

9. ACCOUNTING DISCLOSURE OF UNAUTHORISED EXPENDITURE

(1) With regard to the accounting disclosure of unauthorised expenditure in the books of the municipality in terms of section 125 of the MFMA, the municipality must distinguish in its annual financial statements between unauthorised expenditure relating to expenditure that was not in terms of the council approved annual budget (cash items) and incorrect estimations made which resulted in unauthorised expenditure (non-cash items).

10. EXPENDITURES THAT ARE NOT CLASSIFIED AS UNAUTHORIZED EXPENDITURE

- (1) Given the definition of unauthorised expenditure, the following are examples of expenditure that are NOT unauthorised expenditure:
- (a) Any over-collection on the revenue side of the budget as this is not an expenditure; and
 - (b) any of the transactions mentioned in section 11(1)(a) to (j) of the MFMA;
 - (c) re-allocation of funds and the use of such funds in accordance with a council approved Mantsopa Local Municipality - Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy

- (d) virement policy;
- (e) Any grant to an individual, in terms of the municipality's indigent policy or bursary scheme.
- (f) 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
- (g) 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.

(2) 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) 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*];
- (d) To pay over to a person or organ of state money received by the Mantsopa Local Municipality on behalf of that person or organ of state, including—
- (e) money collected by the Mantsopa Local Municipality on behalf of that person or organ of state by agreement; or
- (f) any insurance or other payments received by the Mantsopa Local Municipality for that person or organ of state;

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- (g) To refund money incorrectly paid into a bank account;
- (h) To refund guarantees, sureties and security deposits;
- (i) For cash management and investment purposes in accordance with section 13 [Section 13: Cash Management and Investments]; and
- (j) To defray increased expenditure in terms of section 31 [Section 31: Shifting of funds between multi-year appropriations].
- (k) Any expenditure approved in terms the Municipal Budget and Reporting Regulations (MBRR).

11. PROCESS TO BE FOLLOWED WHEN DEALING WITH IRREGULAR EXPENDITURE

- (1) All cases of irregular expenditure must be referred to MPAC for investigation. MPAC must, after investigation, make a recommendation to council for the recovery or write off of the irregular expenditure in terms of section 32 (2) (b) of the MFMA.
- (2) In terms of section 170 of the MFMA, only the National Treasury may condone non-compliance with the MFMA or its regulations. The council of [Mantsopa Local Municipality] has no power to “condone” any act of non-compliance with the MFMA or any of its regulations.
- (3) The council may, after investigation and recommendation by MPAC, only resolve “to write off the expenditure as irrecoverable” or “resolve to recover the expenditure”, in terms of section 32(2)(b) of the MFMA.
- (4) Council may only condone a contravention of its own SCM policy or a by-law giving effect to that policy, provided that contravention is not also a contravention of the MFMA or the SCM regulations.
- (5) Irregular expenditure resulting from a contravention of the Public Office-Bearers Act cannot be written-off and must be recovered from the political office bearer concerned, in terms of section 167(2) of the MFMA.

12. RECOGNITION OF IRREGULAR EXPENDITURE

- (1) The recognition of irregular expenditure must be linked to a financial transaction.
- (2) Although a transaction or an event may trigger irregular expenditure, the council will only identify irregular expenditure when a payment is made or when the invoice is received in terms of GRAP 1.
- (3) 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.

13. PROCESS TO BE FOLLOWED WHEN DEALING WITH FRUITLESS AND WASTEFUL EXPENDITURE

- (1) No particular expenditure is explicitly identified in the MFMA as fruitless and wasteful.
 - (2) All expenses regarded as fruitless and wasteful expenditure must be referred to MPAC for investigation. MPAC must, after investigation, make a recommendation to council for the recovery or write off of the fruitless and wasteful expenditure in terms of section 32 (2) (b) of the MFMA.
 - (3) An expense is regarded as 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) and;
 - (b) would have been avoided had reasonable care been exercised (meaning that the official or councillor concerned did not carelessly or negligently cause the expenditure to be incurred by the municipality,
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furthermore another official or councillor under the same circumstances would not have been able to avoid incurring the same expenditure).

- (4) Officials and councillors must always act in an accountable manner that promotes the principles of “efficient, economic and effective use of resources and the attainment of value for money”, by ensuring that fruitless and wasteful expenditure is prevented as far as possible, is detected and reported in a timely manner.
- (5) In determining whether expenditure is fruitless and wasteful, officials and councillors must apply the requirement of reasonable care as an objective measurement, that is-
 - a) 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
 - b) Is the expenditure being incurred at the right price, right quality, right time and right quantity?

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

- (1) The processes to respond appropriately to prohibited expenditure are:
 - (a) disciplinary charges against officials and political office bearers;
 - (b) criminal charges against officials and political office-bearers; and
 - (c) recovery of the fruitless and wasteful expenditure from the liable persons.
- (2) In other words, the writing-off of prohibited expenditure is not a primary response, it is subordinate to the recovery processes, and may only take place if the expenditure is certified by Council as irrecoverable.
- (3) In terms of section 32(2) of the MFMA, read together with Regulation 74 of the MBRR, all

instances of unauthorised, irregular, fruitless and wasteful expenditure must be recovered from the liable official or political office-bearer, unless the expenditure is certified by the municipal council, after investigation by MPAC, as irrecoverable and written off by the council, or has been authorised in an adjustment budget.

- (4) Regulation 74(1) of the MBRR lists issues that must be considered by MPAC in investigating the recoverability of expenditure, including –
- The measures already taken to recover such expenditure,
 - The cost of measures already taken to recover such expenditure, and
 - The estimated cost and likely benefit of further measures that can be taken to recover such expenditure.
- (5) Once it has been established that recovery must be implemented, the accounting officer must in writing request that the liable political office-bearer or official to pay the amount within 30 days or in reasonable instalments. If the liable person fails to comply with the request, the matter must be referred to the normal debt collection process of the municipality.
- (6) The municipality can also institute measures to recover money's paid from service providers who did not deliver the goods or services, as may be appropriate.

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

- (1) The municipal manager must promptly report all instances of unauthorised, irregular, fruitless and wasteful expenditures to the mayor, the MEC for Local Government in the province and the Auditor-General in terms section 32(4) of the MFMA.
- (2) The report mentioned in subparagraph 16(1) above must indicate:
- (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.

(3) The municipal manager must, at least on a quarterly basis, also submit the report to:

- (a) The Finance Portfolio Committee;
- (b) Council;
- (c) MEC for Finance;
- (d) MPAC;
- (e) Audit Committee; and
- (f) Provincial Treasury.

(4) Details of unauthorised, irregular, fruitless and wasteful expenditure must be disclosed in the municipality's annual financial statements as required by the MFMA and treasury requirements and as per annexure D of the revised MFMA circular 68; and disclosed in the municipality's annual report.

16. DISCIPLINARY PROCEEDINGS AND CRIMINAL CHARGES FOR UIF&W

- (1) All allegations of financial misconduct must be referred to the municipality's Disciplinary Board for investigation, to determine whether or not grounds exist for a charge of financial misconduct to be laid against the official liable for the expenditure, in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings read with MFMA Circular 76.
- (2) If, after having followed a proper investigation, the council concludes that the political office-bearer or official responsible for making, permitting or authorising the unauthorised, irregular, fruitless and wasteful expenditure did not act in good faith or committed an act of financial misconduct, then the municipality must institute disciplinary action and criminal charges against the liable person/s in terms of chapter 15 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

(3) The council, mayor or accounting officer (as may be applicable) must institute disciplinary charges as follows:

- (a) *Financial misconduct in terms of section 171 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings:* in the case of an official that deliberately or negligently:
- contravened a provision of the MFMA which resulted in unauthorised, irregular, fruitless, and wasteful expenditure; or
 - made, permitted or authorised an irregular expenditure (due to noncompliance 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 authorising unauthorised, irregular, fruitless and wasteful expenditure constitute 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 authorising unauthorised, irregular, fruitless, and wasteful 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 unauthorised, irregular, fruitless and wasteful expenditure when implemented, or where the political office bearer improperly interfered in the management or administration of the municipality.

(4) Where a financial offence has been committed by any person official or office bearer, the accounting officer or, if the accounting officer is involved, the mayor or the municipal council must report the alleged financial offence to the South African Police Service. In terms of regulation 10(1) of the Municipal Regulations on Financial Misconduct and Criminal Proceedings.

17. MAINTAINING OF REGISTER FOR UNAUTHORISED, IRREGULAR, FRUITLESS & WASTEFUL EXPENDITURE

(1) The accounting officer must implement a register of unauthorised, irregular, fruitless and wasteful expenditure, as set out in Annexure A of MFMA Circular 68, and ensure it is updated on a monthly basis.

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(2) The Register will be a central source of information concerning unauthorised, irregular, fruitless and wasteful expenditure for council and relevant internal and external stakeholders. It is a clear record of the details of the transaction, the type of expenditure, the person liable for the expenditure and what measures were taken by the municipality to address the matter.

(3) This register will be maintained by the CFO.

18. CONSEQUENCES OF NON-COMPLIANCE

(1) Any official or councillor who does not comply with their reporting duties in terms of this policy commits an act of financial misconduct or financial offence.

19. PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UIF&W

(1) The Protected Disclosures Act 2000 (Act No. 26 of 2000) applies to an official who makes a report or disclosure against a political office bearer or an official who is alleged to have committed financial misconduct or financial offence, in terms of regulation 18 of the Municipal Regulations on Financial Misconduct and Criminal Proceedings.

(2) The municipal manager or mayor must immediately take appropriate action to ensure that protection, including reporting to the SAPS where necessary.

20. REVIEW OF POLICY

(1) This policy must be reviewed and updated:

- a) At least annually; and
- b) Submitted to Provincial Treasury for evaluation with other budget-related policies, in line with the budget cycle; or
- c) At any time if new legislation, regulations or circulars are issued that have an impact on this policy.

21. EFFECTIVE DATE

This policy takes effect on 14 August 2020.

Signed:

Date