

# UMUZIWABANTU LOCAL MUNICIPALITY POLICY



## FINAL UNAUTHORISED, IRREGULAR, FRUITLESS AD WASTEFULL EXPENDITURE POLICY

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## ABBREVIATIONS

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

ABBREVIATION	DESCRIPTION
CFO	Chief Financial Officer
MIG	Municipal Infrastructure Grant
MUNICIPALITY	Umuziwabantu Local Municipality
MFMA	Municipal Financial Management Act ,2003, Act No. 56 of 2003
MPAC	Umuziwabantu Local Municipality's Municipal Public Account Committee
MM OR AO	Municipal Manager or Accounting Officer
SAPS	South African Police Services
MSA	Municipal Systems Act, 2000, Act No. 32 of 200
MSA	Municipal Structures Act, 1998, Act No. 117 of 1998
RBOPA	Remuneration of Public Office Bearers Act, 1998, Act No. 20 of 1998
Policy	Policy in Unauthorized, Irregular, Fruitless and Wasteful Expenditure
MBRR	Municipal Budget Rules and Regulations

## **1. INTRODUCTION**

- 1.1.** In terms of section 62 of the Municipal Finance Management Act, Act No. 56 of 2003 herein referred as “ MFMA”), the Accounting Officer is responsible for the managing the financial affairs of Umuziwabantu Local Municipality and he/she must for the purpose, interalia:
- a) Take all reasonable steps to ensure that unauthorized, irregular, fruitless and wasteful expenditure and other losses are prevented; and
  - b) Ensure that disciplinary or when appropriate criminal proceeding are instituted against any official or councilor of the MUNICIPALITY who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA.
- 1.2.** This is to ensure the effective, efficient and transparent system of financial, risk management and internal control.

## **2. OBJECTIVES**

- 2.1. This document sets out Umuziwabantu Local Municipality’s policy and procedures with regard to unauthorized, irregular, fruitless and wasteful expenditure.
- 2.2. This policy aims to ensure that, amongst other things:
- a) Unauthorised, irregular, fruitless and wasteful expenditure is detected, processed, recorded and reported in timely manner;
  - b) Officials and Councilors have a clear and comprehensive understanding of the procedures they must follow when addressing unauthorized, irregular, fruitless and wasteful expenditure;
  - c) Municipality’s resources are managed in compliance with MFMA, the municipal regulations and other relevant legislations; and
  - d) All officials and councilors are aware of their responsibilities in respect of unauthorized, irregular, fruitless and wasteful expenditure.

## **3. ENABLING LEGISLATIONS**

The following enabling legislations set the development of the MUNICIPALITY’s unauthorized, irregular, fruitless and wasteful expenditure policy:

- a) The Constitution of the Republic of South Africa Act, 1996, Act No.108 of 1996;
- b) The Municipal Finance Management Act, 2003, Act 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, 1998, Act No. 117 of 1998
- f) MFMA Circular 68; and
- g) Other legislations, regulations or circulars that may impact this policy.

#### **4. APPLICATION OF THE POLICY**

- 4.1.** This policy applies to all officials and councilors of Umuziwabantu Local Municipality.
  
- 4.2.** This policy should be read in conjunction with following municipal documents:
  - a) Delegation of Authority’;
  - b) Procedures for unauthorized, irregular, fruitless and wasteful expenditure;
  - c) Policy of financial misconduct;
  - d) Breach of the Code of conduct for municipal Staff members;
  - e) Breach of the Code of conduct for councilors; and
  - f) Regulation on financial misconduct.
  
- 4.3.** Officials and councilors 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.

**5. DEFINITIONS**

Except, if otherwise indicated,

<b>NAME</b>	<b>DEFINITION</b>
<b>Councilor</b>	Means member of the municipal council of Umuziwabantu Local Municipality
<b>Fruitless and Wasteful Expenditure</b>	Means expenditure that was made in vain and would have been avoided if had reasonable care been exercised.
<b>Financial misconduct</b>	Means misappropriation, mismanagement, waste or theft of the finances of the municipality; and also includes any form of financial misconduct specifically set out in sections 171 and 172 of the Act.
<b>Irregular expenditure</b>	<p>In relation to a municipality or entity, means the following:</p> <ul style="list-style-type: none"> <li>a) Expenditure incurred by the municipality in contravention of , or that is not in accordance with a requirement of the Act, and which has not been condoned in terms of section 170;</li> <li>b) Expenditure incurred by the 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;</li> <li>c) Expenditure incurred by the municipality in contravention of, or that is not in accordance with a requirement of the Public Office Bearers Act, and which has not been condoned in terms of this Act.</li> <li>d) Expenditure incurred by the municipality 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 municipality's</li> </ul>

	<p>by laws giving effect to such policy, and which has not been condoned in terms of such policy or by laws; or</p> <p>e) Exclude expenditure by a municipality which falls within a definition of “unauthorised expenditure”.</p>
<b>Official</b>	<p>In relation to the municipality means:</p> <p>a) An employee of Umuziwabantu Local Municipality;</p> <p>b) An person seconded to the municipality or to work as a member of the staff of the municipality;</p> <p>c) A person contracted by the municipality to work as a member of the staff of the municipality or otherwise than as an employee.</p>
<b>Overspending</b>	<p>a) In relation to the budget of the municipality, means causing the operational or capital expenditure incurred by the municipality during the financial year to exceed the total amount appropriated in that year’s budget for its operational or capital expenditure, as it may be;</p> <p>b) In relation to vote, means causing expenditure under the vote to exceed the amount appropriated for that vote;</p> <p>c) In relation to expenditure under section 26, means causing expenditure under that section to exceed the limit allowed in subsection (5) of this section.</p>
<b>Political Office Bearer</b>	<p>Means the speaker, executive mayor, mayor, deputy mayor, or a member of the executive committee as referred to in the Municipal Structures Act.</p>
<b>Prohibited Expenditure</b>	<p>In relation to the policy means unauthorized, irregular, fruitless and wasteful expenditure.</p>

<b>Senior Manager</b>	Has the meaning assigned to it in section 1 of the MFMA and in relation to municipality refers to HODs
<b>Unauthorised Expenditure</b>	<p>Means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3); and includes:</p> <ul style="list-style-type: none"> <li>a) Overspending of the total amount appropriated in the municipality's approved budget;</li> <li>b) Overspending of the total amount appropriated for the vote in the approved budget;</li> <li>c) Expenditure from vote unrelated to the department or functional area covered by the vote;</li> <li>d) Expenditure of the money appropriated for a specific purpose, otherwise than for that specific purpose; and</li> <li>e) Spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of allocation, otherwise than in accordance with the MFMA.</li> </ul>
<b>Vote</b>	<p>Means:</p> <ul style="list-style-type: none"> <li>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</li> <li>b) Which specifies the total amount that is appropriated for the purpose of the department functional area concerned.</li> </ul>



## **6. UNAUTHORISED EXPENDITURE**

- 6.1.** Umuziwabantu Municipality may incur expenditure only in terms of the approved budget and within the limits of the amount appropriated for the different votes in an approved budget.
- 6.2.** Any expenditure incurred within the ambit of the municipality's virement policy is not regarded as an unauthorised expenditure.
- 6.3.** Any expenditure that has been budget for , expenditure that is not in terms of the conditions of an allocation received from another sphere of government, economic entity or organ of state and expenditure in the form of a grant that is not permitted in terms of the MFMA is regarded as unauthorised expenditure.
- 6.4.** Unauthorised expenditure will include the following:
  - a) Any overspending in relation to both the operational budget and capital budget of the municipality;
  - b) Overspending in relation to each of the votes on both the operational budget and capital budget ;
  - c) Use funds allocated to one department for purposes of another department or for purposes that are not provided for the budget;
  - d) Funds that have been designated for a specific purpose or project within the departments vote may not be used for any other purposes;
  - e) Any use of conditional grant funds for purposes other than that specified in the relevant conditional grant framework is classified as unauthorised expenditure;
  - f) Any grant to an individual or household unless it is in terms of the municipality's indigent policy, bursary scheme, corporate social responsibility policy, councilors discretionary grant or the grant-in-aid;
  - g) Unforeseen or avoidable expenditure not authorized within an adjustments budget within 60 days after the expenditure was incurred; and
  - h) Any overspending of no cash items for example depreciation impairments.

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

**6.6.** Expenditures that are NOT classified as unauthorised expenditure

Given the definition of unauthorised expenditure, the following examples of expenditure are NOT unauthorised 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 the following:
  - Any of the transactions mentioned in section 11(1) to (j) of the MFMA;
  - Re-allocation of funds and the use of such funds in accordance with council approved virement policy;
  - Overspending of an amount allocated by standard classification of the main budget
    - Table A2 (Budget 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 Budget Financial Performance revenue and expenditure by standard classification, (read in conjunction with supporting Table SA1) of the MBRR; and
- iii) Overspending of an amount allocated by standard classification on the main budget Table A5 (Budget 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.

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

- a) To defray expenditure unauthorised in terms of section 26(4) of the MFMA, (*section 26: consequences if failure to approve a budget before the start of the budget year*);
- b) To defray any unforeseen /unavoidable expenditure circumstances strictly in accordance with section 29 (1) of the MFMA (*section 29: Unforeseen and*

*unavoidable expenditure*) falling which the unforeseen/ unavoidable 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 relief, charitable or trust purposes provided of course that 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 organization of state money received by the municipality on behalf of that person or organ of state, including:
  - (i) Money collected by the municipality on behalf of that person or organ of state by agreement; or
  - (ii) Any insurance or other payments received by the municipality for that person or organ of state;
- f) To refund money incorrectly paid into bank account;
- g) To refund guarantees, securities and security deposits;
- h) For cash management and investment purposes in accordance with Section 13 (*Section 13: Cash Management and Investments*); and
- i) To defray increased expenditure in terms of Section 31 (*section 31: Shifting of funds between multi-year appropriation*).

6.6.2. Any expenditure approved in terms of Municipal Budget and Reporting Regulations (MBRR).

## **7. IRREGULAR EXPENDITURE**

- 7.1.** Irregular expenditure is an expenditure that is contrary to the Municipal Finance Management Act (Act No. 56 of 200); the Municipal Systems Act (Act No.32 of 200) and the Public Office Bearers Act (Act No. 20 of 1998) or is in contravention of the Supply Chain Management policy.
- 7.2.** Irregular expenditure is actually an expenditure that is in violation of some or other procedural/ legislative requirement as specified in the MFMA.
- 7.3.** Irregular expenditure excludes unauthorised expenditure.

**7.4.** Although a transaction or an event may trigger expenditure, Council may only identify irregular expenditure when 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 payment being made, the transgression shall be regarded as a matter of non-compliance.

#### **7.6. REMUNERATION OF COUNCILORS**

7.6.1. Payment to municipal councilors cannot exceed the upper limits of salaries, allowances and benefits for those councilors as promulgated in the Public Office Bearers Act.

7.6.2. Any remuneration paid or given in cash or in kind to a person as a councilor or as a member of political structure of the municipality otherwise than in accordance with:

7.6.2.1. Including any bonus, loan, advance or other benefit, must be classified as irregular expenditure

#### **7.7. IRREGULAR STAFF APPOINTMENTS**

No person may be employed in the municipality unless the post which he or she is appointed is provided for in the municipality's staff establishment as approved by the Council.

**7.8.** Officials and councilors must ensure that all instances of the fruitless and wasteful expenditure are prevented where possible, detected and reported in a timely manner.

### **8. FRUITLESS AND WASTEFULL EXPENDITURE**

**8.1.** All officials and councilors 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 when 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 expenditure.
- 8.4.** Expenditure incurred that has been budgeted for (authorized) and was not regarded as irregular expenditure could be classified as fruitless and wasteful expenditure.

**8.5. DETERMINATION OF A FRUITLESS AND WASTEFUL EXPENSE**

- 8.5.1. An expense is only fruitless and wasteful in terms of the policy if:
- (i) It was made in vain (meaning that the municipality did not receive value for money) ;
  - (ii) And would have been avoided if reasonable care been exercised (meaning that the official and councilor concerned did not carelessly or negligently cause the expenditure to be incurred by the municipality, furthermore, another official or councilor under the same circumstances would have not been able to avoid incurring the same expenditure.
- 8.5.2. In determining whether the expenditure is fruitless and wasteful, officials and councilors must apply the requirements of reasonable care as an objective measurement to determine whether or not a particular expenditure is fruitless and wasteful, that is:
- a) Would an average man (in this case the average experienced official or councilor) have incurred that particular expenditure under exactly the same conditions or circumstances? And
  - b) Is expenditure being incurred at right price, right quality, right time and right quantity?
- 8.6.** Officials and councilors must ensure that all instances of the fruitless and wasteful expenditure are prevented where possible, and are detected and reported in timely manner.

## **9. REPORTING ON UNAUTHORIZED , 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 councilor of the municipality must be reported to the Speaker of the Council;
  - b) The Municipal Manager and the Speaker , must be reported to the Mayor;
  - c) Head of Departments, 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 unless the legislations are frivolous, vexatious, speculative or obviously unfounded; and
  - e) Officials below management level of the municipality, must be reported to the CFO unless in the professional opinion of the CFO or MM the nature of the amount of the prohibited expenditure warrants the case to be referred to MPAC.
- 9.2.** All reports made by officials, councilors must be treated with utmost confidentiality.
- 9.3.** The MM 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 unauthorized, irregular, or fruitless and wasteful expenditure; and
  - b) The steps that have been taken:
    - To recover or rectify expenditure; and
    - To prevent a recurrence of such expenditure.
- 9.4.** All expenditure classified as unauthorised, irregular, fruitless, and wasteful expenditure must be reported to:
- a) The Finance, Budget Control and Corporate Services Portfolio Committee on a monthly basis;
  - b) Executive Committee on a monthly basis;
  - c) Council on a quarterly basis;
  - d) MPAC on a quarterly basis; and
  - e) Audit Committee on a quarterly basis.

- 9.5.** In accounting for unauthorised, irregular, fruitless, and wasteful expenditure, 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 separate account, in the accounting system of the municipality, created for each of the above types of expenditure;
  - b) All such expenditure is disclosed in the annual financial statement as required by the MFMA and Treasury requirements; 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) The register will be maintained by the CFO or designated official from the finance department;
  - b) The CFO will report to the MM of any incidents of unauthorised, irregular, fruitless, and wasteful expenditure:
  - c) MM will report to the council of any incidents of of unauthorised, irregular, fruitless, and wasteful expenditure for approval or investigation depending on the matter.
- 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 all prohibited expenditure reported in terms of clause 9.1. (d) above.
- 11.2.** CFO must seek MM's approval to investigate all prohibited expenditure reported to her/him in terms of clause 9.1 (e) unless the allegations are frivolous, vexatious, speculative or obviously unfounded.
- 11.3.** Once the nature of the expenditure is confirmed as unauthorised, irregular, fruitless, and wasteful expenditure, the person to whom the prohibited expenditure was reported in terms of clause 9.1. above must institute the necessary procedure which could include disciplinary as well as criminal proceedings.

## **12. DISCIPLINARY AND CRIMINAL CHARGES OF UNAUTHORISED, IRREGULAR, FRUITLESS, AND WASTEFUL EXPENDITURE**

- 12.1.** After having followed a proper investigation as per paragraph 11 above the MPAC or the CFO as the case may be must determine whether there is a prima facie case that a councilor or official made, permitted or authorized prohibited expenditure.
- 12.2.** If a prima facie has been established as per paragraph 12.1. above, then MPAC , 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 case of an official that deliberately or negligently:
    - (i) Contravened a provision of the MFMA which resulted in prohibited expenditure; or
    - (ii) Made, permitted or authorized an irregular expenditure (due to non-compliance with any of legislation mentioned in the definition of irregular expenditure);
  - b) Breach of Code of Conduct for Municipal Staff Members: in the case of an official whose actions in making, permitting or authorizing a prohibited expenditure constitute a breach of the code; and
  - c) Breach of Code of Conduct for Councilors: in the case whose actions in making, permitting or authorizing a prohibited expenditure constitute a breach of the code. This would also include instances where a councilor knowingly voted in favour or agreed with a resolution before council that contravened legislation resulting in prohibited expenditure when implemented, or where the councilor improperly interfered in the management or administration of the municipality.
- 12.3.** The MPAC, Mayor or Municipal Manager or delegated official ( 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.
- 12.4.** The Mayor must take all reasonable steps to ensure that all cases referred to in the above paragraph are reported to the SAPS if:
- a) The charge is against the MM; or



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

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

- 13.1.** The MM must recover unauthorised, irregular, fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure:
  - a) The case of unauthorised expenditure, is
    - (i) Authorised in an adjustment budget ; or
    - (ii) certified by the municipal council, after investigation by MPAC ,as irrecoverable and is written off by council; and
  - (b) 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.
- 13.2.** Irregular expenditure resulting from the breach of the Public Office Bearers Act must be recovered from the councilor to whom it was paid.
- 13.3.** Once it has been established who is liable for an unauthorised, irregular, fruitless and wasteful expenditure, the Municipal Manager must in writing request that the liable councilor or official pay the amount within 30 days or reasonable installments.
- 13.4.** Without limiting liability in terms of common law or other legislation, the MM must recover any such expenditure, in full, from official or councilor where:
  - a) In the case of councilors, the councilors 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 the councilor of the municipality to incur the expenditure; and
  - b) In the case of the official, the official deliberately or negligently incurred such expenditure.
- 13.5.** The fact that the council may be approved the expenditure for writing off or deemed 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, fruitless and wasteful expenditure; or
  - b) Recovery of such expenditure from such person.

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

#### **14. CONSEQUENCES OF NON-COMPLIANCE**

- 14.1.** Any official or councilor who does comply with their reporting duties in terms of this policy could be found guilty of financial misconduct.
- 14.2.** Any official or councilor of the municipality will be committing an act of financial misconduct, if that official or councilor deliberately makes or permits or instructs another official of the municipality to make an unauthorised, irregular or 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 councilor who has complied with this policy and as a result thereof has been subjected to intimidation or victimization shall immediately report to MM or Mayor where possible.
- 15.2.** The MM or Mayor must immediately take appropriate action to ensure that protection of the official or councilor after receiving the above report.
- 15.3.** Where the nature of the threat warrants such action, the threats should be reported to the SAPS by the official concerned, the MM, the MM or the Mayor where applicable.

#### **16. EFFECTIVE DATE**

The policy will be effective upon Adoption of Council

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