

SWELLENDAM MUNICIPALITY



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

TABLED BY COUNCIL 30 MARCH 2023

IMPLEMENTATION DATE 1 JULY 2023

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1. DEFINITIONS

For the purpose of this policy, unless the context indicates otherwise, any word or expression to which a meaning has been attached in the Act shall bear the same meaning and means:-

"Act" means the Municipal Finance Management Act No 56 of 2003.

"Accounting Officer" means the municipal manager of a municipality as referred to in section 60 of the act and includes a person acting as a municipal manager.

"Corruption" means any person who gives or accepts or offers to give or accept any gratification amounting to an unauthorised or improper inducement to act or not to act in a particular manner using is guilty of an offence.

"Financial Misconduct" means where the accounting officer or chief financial officer or senior managers or any other official of the municipality deliberately or negligently:

- a) Contravenes a provision of the act;
- b) Fails to comply with a duty imposed by a provision of the act on the accounting officer of a municipality;
- c) Makes or permits or instructs another official of the municipality to make, an unauthorized, irregular or fruitless and wasteful expenditure;
- d) Provides incorrect or misleading information in any document which in terms of a requirement of the act must be submitted to the Mayor or the Council of the municipality or to the Auditor-General, the National Treasury or any other organ of state or made public.

"Fraud" means the unlawful and intentional making of a misrepresentation that causes actual prejudice or which is potentially prejudicial to another.

"Forgery" means the unlawfully and intentionally making a false document to the actual or potential prejudice of another.

"Irregular Expenditure" means:

- a) Expenditure incurred by a municipality or municipal entity 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 of the MFMA;
- 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 in contravention of, or that is not in accordance with, a requirement of the supply chain management (SCM) policy of the municipality or entity 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 excludes expenditure by a municipality which falls within the definition of "unauthorised expenditure.

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

"MPAC" means the Municipal Public Accounts Committee.

"MSA" means the Municipal Systems Act No 32 of 2000.

"MTSF" means the Medium-Term Strategic Framework.

"NT" means National Treasury.

"PT" means Provincial Treasury.

"SCM" means the Supply Chain Management Policy of the Swellendam municipality.

"Theft" means the unlawful appropriation of moveable corporeal property belonging to another with the intent to deprive the owner permanently of the property.

"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 the municipality otherwise than in accordance with the MFMA.

"UIFW" means unauthorised, irregular or fruitless and wasteful expenditure.

2. PURPOSE

- 2.1 In terms of section 32 of the MFMA, the accounting officer must exercise all reasonable care to prevent and detect unauthorised, irregular or fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial risk management
- 2.2 The purpose of this policy is to establish a UIFW expenditure reduction strategy for the Municipality and set out the objectives, statutory requirements and guidelines for the reduction of UIFW expenditure.

3. OBJECTIVES

- 3.1 The objectives of the policy include-
- a) Emphasising the accountability of employees for the Swellendam Municipality resources;
 - b) Ensuring that employees have a clear and comprehensive understanding of the procedures they must follow;
 - c) Ensuring that resources made available to employees are utilised efficiently, effectively, economically and for authorised official purposes only
 - d) Ensuring that the Municipal resources are managed in compliance with the MFMA, the Treasury Regulations and other relevant legislation;
 - e) Ensure that UIFW expenditure is detected, processed and recorded timeously.

4. APPLICABLE LEGISLATION

- 4.1 Municipal Finance Management Act No. 56 of 2003.
- 4.2 Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings of 2014.
- 4.3 Municipal Budget and Report Regulations of 2009.
- 4.4 SCM Regulations of 2003 and related legislation.
- 4.5 Municipal Systems Act No. 32 of 2000 and related regulations.
- 4.6 Municipal Structures Act No. 117 of 1998 and related regulations.
- 4.7 Labour Relations Act No. 66 of 1995 and regulations.
- 4.8 Disciplinary Regulations for Senior managers of 2010.

5. THE ROLE OF THE NATIONAL TREASURY

- 5.1 In terms of section 5(2) of the MFMA, NT must monitor and assess compliance by municipalities with the MFMA and take appropriate steps to perform its functions effectively.

- 5.2 In assisting municipalities to address the historical UIF&W expenditure, NT:
- a) Provides support, guidance and advice to municipalities, including internal audit units, audit committees, risk committees, chief financial officers, supply chain management units; disciplinary boards and MPACs on compliance with the MFMA and its regulations;
 - b) Provides training and capacity building to municipalities on the MFMA and its regulations;
 - c) Issues MFMA circulars that further clarify the MFMA and its regulations for consistent application;
 - d) Monitors progress made in addressing UIFW expenditure, as per the MTSF goals;
 - e) Provides assistance to PT's to support delegated municipalities.

6. THE ROLE OF THE PROVINCIAL TREASURY

- 6.1 In terms of section 5(3) of the MFMA, a PT must comply with a prescribed framework and monitor compliance with the MFMA by municipalities in the province.
- 6.2 In terms of section 6 of the MFMA, the Minister of Finance has delegated certain municipalities to the members of the executive council for finance of the respective provinces and duties of the PTs in this regard include the following:
- a) Providing support, guidance and advice to municipalities (officials and MPAC) on compliance with the MFMA and its regulations;
 - b) Providing training and capacity building to municipalities on the MFMA and its regulations;
 - c) Monitoring progress made in addressing UIFW expenditure, as per the MTSF goals;
 - d) Providing initiatives to support municipal public accounts committees.

7. THE ROLE OF THE ACCOUNTING OFFICER

- 7.1 The accounting officer of a municipality must act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs.
- 7.2 In terms of section 62(1)(d) of the act, the accounting officer must take all reasonable steps to ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented.
- 7.3 To ensure the proper application of the act, the accounting officer must develop an appropriate system of delegations that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial administration.

- 7.4 In terms of section 79 of the act, the accounting officer must delegate certain functions to the chief financial officer, senior managers or other financial officials.
- 7.5 In terms of section 32(4) of the act, the accounting officer 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. Given the transition of this function, such reports must also be provided to the MEC for Finance in the province as a practice to align with the strategic focus in addressing UIFW.
- 7.6 The accounting officer must ensure that the council processes and procedures to address UIFW expenditure is dealt with effectively, efficiently and on a timely basis.
- 7.7 The accounting officer can separate the process when addressing UIFW expenditures such as unauthorised expenditure, which can be followed before the end of the financial year to authorise unauthorised expenditure.
- 7.8 The accounting officer must ensure that any disciplinary actions that are required as a consequence of the incurrence of UIFW expenditure are instituted within the time limits as contemplated in the Labour Relations Act and other relevant legal frameworks. In addition, the disciplinary process should be conducted following any applicable collective agreement dealing with disciplinary processes applicable to the municipality. For senior managers of municipalities, the disciplinary procedures must be conducted following the Local Government: Disciplinary Regulations for Senior Managers.
- 7.9 In terms of section 32(6) of the act, the accounting officer must report to the South African Police Service all cases of alleged irregular expenditure that constitute a criminal offence or fraud and corruption.
- 7.10 In terms of section 125 of the act, municipalities must disclose, in the notes of the annual financial statements, any particulars of any material losses and any material irregular or fruitless and wasteful expenditures, including in the case of a municipality, any material unauthorised expenditure, that occurred during the financial year, and whether these are recoverable.
- 7.11 In terms of section 62(1)(e) of the act, the accounting officer must take all reasonable steps to ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the act.
- 7.12 Disclose any documents, as may be prescribed, on their website.

8. THE ROLE OF OTHER OFFICIALS OF A MUNICIPALITY

- 8.1 In terms of section 78(1) of the act, each senior manager of a municipality and each official of a municipality exercising financial management responsibilities must take all reasonable steps within their respective areas of responsibility to ensure that any unauthorised, irregular, fruitless and wasteful expenditure and any other losses are prevented.

9. THE ROLE OF THE MAYOR AND THE MUNICIPAL COUNCIL

- 9.1 In terms of section 52 of the act, the mayor must provide general political guidance over the fiscal and financial affairs of the municipality.
- 9.2 The council must oversee the performance of the accounting officer and senior officials in implementing measures to prevent the incurrence of UIFW expenditure, as well as monitoring the implementation of consequence management against the officials responsible for the incurrence of UIFW expenditure.
- 9.3 In terms of section 32(2)(b) of the act, when a financial loss occurs, recover UIFW expenditure from the person liable for that expenditure unless the expenditure, in the case of UIFW expenditure, is, after an investigation by a council committee, certified by the council as irrecoverable and written off by the council.
- 9.4 In terms of section 32(7) of the act, the council of a municipality must take all reasonable steps to ensure that all cases referred to in section 32(6) of the MFMA are reported to the South African Police Service if the charge is against the accounting officer; or the accounting officer fails to comply with section 32(6) of the MFMA.

10. THE ROLE OF THE SECTION 32 COMMITTEE

- 10.1 In terms of section 32(2)(a) of the act, investigate the recoverability of any UIFW expenditures resulting in a financial loss for the municipality after considering the following:
- a) The measures already taken to recover such expenditure;
 - b) The cost of the measures already taken to recover such expenditure;
 - c) The estimated cost and likely benefit of further measures that can be taken to recover such expenditure;
 - d) Make recommendations to council whether to recover the UIFW or if the expenditures are irrecoverable;
 - e) Submit a motivation explaining its recommendations to the municipal council for a final decision.

11. THE ROLE OF INTERNAL AUDIT, AUDIT COMMITTEE AND RISK MANAGEMENT

11.1 Internal audit

- a) In terms of section 165 of the act, the internal audit units must assist the accounting officer in their duties by providing independent assurance on internal controls, financial information, risk management, performance management and compliance with legislation;
- b) Internal audit units must compile risk-based audit plans, review internal control measures, and ensure that supply chain management, including the requirements of MFMA circular 65, is sufficiently and adequately covered in the annual coverage plan;
- c) Internal auditors must be alert to fraud risks and design audit procedures and indicators that would reasonably assist in preventing and detecting potential or actual fraud and corruption;
- d) Internal audit units must as far as possible be utilised as a resource to provide the accounting officer with assurance around compliance matters;
- e) Provide information and advice to the accounting officer on all cases of UIFW expenditures and assist the Section 32 Committee with the investigations where required;

11.2 Audit committee

- a) The audit committees must advise the accounting officer, senior management and the council on internal controls, risk management, performance management and compliance with legislation.
- b) The committee is further required to assure the adequacy, reliability and accuracy of financial and performance information.
- c) Provide oversight on the section 32 reports on UIFW and make recommendations on internal control, risk management and legislative compliance.

11.3 Risk management

- a) The risk management function must identify all the critical risks that may result in the incurrence of UIFW expenditure and ensure that a risk strategy to address the related risks is developed and monitored by both council and the accounting officer.

12. PROCESS TO BE FOLLOWED

12.1 The procedures for the treatment of UIFW expenditure are described below:

- a) Any senior manager and or other officials who become aware of or suspect the occurrence of UIFW expenditure must immediately report in writing such expenditure to the accounting officer or his/her delegate;

- b) On discovery of alleged UIFW expenditure, the accounting officer or his/her delegate should record the details of the expenditure in a UIFW register;
- c) The accounting officer or his/her delegate must investigate the alleged UIFW expenditure;
- d) If the UIFW expenditure is confirmed through the preliminary investigation, the accounting officer must submit a report to the council to appoint a council committee to consider the UIFW expenditure;
- e) The council committee must make recommendations to the council whether the UIFW must be recovered or written off as irregular;
- f) The accounting officer must ensure to institute criminal or disciplinary proceedings against an official charged with the commission of an offence or a breach of the act relating to UIFW expenditure;
- g) The accounting officer or delegate must report all cases of alleged UIFW expenditure that constitute a criminal offence and or theft and fraud to the South African Police Service;
- h) Subsequent to a Council resolution to recover the UIFW, the accounting officer must in writing request the liable official to pay the UIFW amount within 30 days or in reasonable instalments, failure to hand it over for debt collection process;
- i) The accounting officer must incorporate consequence management as part of the expenditure recovery process.

13. REPORTING OF UIFW EXPENDITURE

- 13.1 The alleged UIFW expenditure must be recorded in the UIFW register by the accounting officer or his/her delegate.
- 13.2 The register must be updated quarterly and be reported to the next meeting of the Council.
- 13.3 The register must be updated and be submitted quarterly to the next meeting of the Council and audit committee.
- 13.4 The register must be submitted quarterly to the national and provincial treasury for oversight.
- 13.5 The accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General in writing of any UIFW expenditure including the following:
 - a) Whether any person is responsible or under investigation for the UIFW expenditure;
 - b) The steps taken to recover or rectify such expenditure;
 - c) The steps taken to prevent a recurrence of such expenditure.

13.6 The outcome of the council resolution on the section 32 committee recommendations must be submitted to the MEC for local government, the Auditor-General and the audit committee.

13.7 The UIFW expenditure must be disclosed as a note to the Annual Financial Statements.

14. TREATMENT OF UIFW EXPENDITURE

14.1 Recognition and measurement of UIFW expenditure shall be treated in terms of the act.

15. CATEGORIES OF UIFW EXPENDITURE

15.1 Unauthorised expenditure

- a) Overspending must be determined in relation to both the operational budget and the capital budget;
- b) The municipality operational and capital budgets are divided into 'votes' which represent those components of the budget that have amounts appropriated for the financial year, for different departments or functional areas. Overspending must be determined in relation to each of the votes on both the operational budget and the capital budget for the functional area;
- c) Unauthorised expenditure is determined when funds appropriated in a vote for a department or functional area is used for purposes unrelated to the functions of that department or functional area;
- d) Unauthorised expenditure is determined when funds designated for a specific purpose or project are 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 is unauthorised expenditure unless it is in terms of the municipality's indigent policy or bursary scheme;
- g) Unforeseen and unavoidable expenditure is unauthorised if such expenditure is not passed within 60 days after the expenditure was incurred;
- h) Given the above classifications of unauthorised expenditure, the following are examples of expenditures that are NOT unauthorised expenditure:
 - Any over-collection on the revenue side of the budget as this is not an expenditure;
 - 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 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);
 - Overspending of an amount allocated by standard classification on the main budget Table A5 (Budgeted Capital Expenditure by vote, standard classification and funding) as long as it does not result in overspending of a 'vote' on the main budget Table A5.
- i) Council may only authorise unauthorised expenditure in an adjustments budget as follows:
- Adjustment budget for unforeseen and unavoidable expenditure;
 - Main adjustment budget no later than 28 February of the current year;
 - Special adjustment budget to authorised unauthorised expenditure that occurred in the second half previous financial year, and any unauthorised expenditure identified by the Auditor-General during the annual audit process.

15.2 Fruitless and wasteful expenditure

- a) Fruitless and wasteful expenditure is determined when the municipality derived no value for money from the expenditure or the use of other resources and it would have been avoided had reasonable care been exercised.

15.3 Irregular expenditure

- a) Irregular expenditure refers to any use of municipal funds that are in contravention of the following legislation:
- Municipal Finance Management Act, Act 56 of 2003, and its regulations;
 - Municipal Systems Act, Act 32 of 2000, and its regulations;
 - Public Office-Bearers Act, Act 20 of 1998, and its regulations; and
 - The municipality's supply chain management policy, and any regulations giving effect to that policy:
 - i) Procuring of goods or services by means of quotations where the value of the goods/services exceed the set threshold as determined in the SCM policy;
 - ii) Procuring goods or services by means of other than through competitive bids where the reason for deviating from the prescribed processes have not been recorded or approved in terms of section 17 of the SCM regulations.;

- iii) Non-adherence to any delegation of authority as approved;
 - iv) Expenditure outside contracts or contracts expired and was not extended in terms of MFMA section 116.
- b) Given the above classification irregular expenditure may only be written-off by Council after an investigation by a council committee and certified to be irrecoverable as follows:
- In terms of the act, only NT may condone non-compliance. Therefore the council resolution wording must be consistent with section 32(2)(b) of the act i.e "council hereby certify the expenditure as irrecoverable and resolve that it be written off or for recovery of the funds".
 - In terms of the MSA, only the Minister of Co-operative Governance and Traditional Affairs may condone non-compliance. Therefore the council resolution wording must be consistent with section 32(2)(b) of the act i.e "council hereby certify the expenditure as irrecoverable and resolve that it be written off or for recovery of the funds"
 - There is no provision to allow irregular expenditure resulting from a contravention of the Public Office-Bearers Act to be condoned. Such irregular expenditure cannot be written-off and must be recovered from the political office- bearer concerned.
 - 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 act or the SCM regulations, in which only the National Treasury can condone a contravention of the SCM regulations. Therefore the council resolution wording must be consistent with section 32(2)(b) of the act i.e "council hereby certify the expenditure as irrecoverable and resolve that it be written off or for recovery of the funds".

16. CONSEQUENCE MANAGEMENT

- 16.1 There should be consequences for transgressions, a lack of action and poor performance.
- 16.2 Consequences should be instituted by the accounting officer against officials who fail to comply with applicable legislation, continuously underperform or are negligent, and against those whose actions and decisions cause financial losses.
- 16.3 Allegations of financial misconduct must be referred to the disciplinary board to investigate and monitor the institution of disciplinary proceedings as contemplated in the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceeding.
- 16.4 In cases where a financial loss must be recovered from an official and/or councillor, the UIFW amount will be recovered from the individual salary.

- 16.5 In the case of termination of an official and/or councillor, the UIFW amount will be recovered from the last salary and benefits and if insufficient a legal claim will be instituted against the individual.

17. REDUCTION PLAN AND STRATEGY

- 17.1 Submit all UIFW expenditure as per the latest (audited) financial statements and related information that have not gone through section 32 of the act process to the Council by no later than March of the current year.
- 17.2 Obtain a council resolution to refer UIFW expenditure to a council committee (the Section 32 Committee) to produce a report on its recommendations to the council for a final decision to certify the expenditure as irrecoverable and resolve that it be written off or for recovery of the funds.
- 17.3 Council to consider the report by the council committee on the investigation of the UIFW expenditure and resolved to certify the expenditure as irrecoverable and resolve that it be written off or for recovery of the funds.
- 17.4 Based on the outcome of the UIFW expenditure investigations, the accounting officer to refer the matter to the disciplinary board to investigate allegations of financial misconduct and to monitor the institution of disciplinary proceedings.
- 17.5 Update the UIFW expenditure register and annual financial statements with the outcomes of the council resolutions on UIFW expenditures.

18. UIFW EXPENDITURE REDUCTION ACTION PLAN

- 18.1 The council committee (Section 32 Committee) will have quarterly meetings to process UIFW expenditure.
- 18.2 The accounting officer or delegated official must table the UIFW registers with an action plan at the Section 32 Committee quarterly meetings.
- 18.3 The accounting officer or delegated official must process unauthorised expenditure authorised by the council in the next available adjustment budget.
- 18.4 The accounting officer or delegated official to submit the UIFW registers and implementation plan to the Mayor, NT and PT.

- 18.5 The accounting officer or delegated official to implement preventative controls to establish a sound control environment related to preventing and reducing UIFW expenditure.
- 18.6 The accounting officer to implement consequences management where applicable and report to the council on the progress made.
- 18.7 Training on UIFW expenditure be provided annually for all councillors, senior employees, members of section 32 committee and audit committee.

19. SHORT TITLE

- 19.1 This policy shall be called the Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy of the Swellendam Local Municipality.