



## BA-PHALABORWA MUNICIPALITY

Unauthorized, Irregular, Fruitless and Wasteful Expenditure

Policy and Procedures

2021/22

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## **1. BACKGROUND AND OBJECTIVES OF THE POLICY**

### **1.1 Background**

In terms of section 62 of the MFMA it is the responsibility of the Accounting officer to effectively manage the financial administration of the municipality and must for this purpose take all reasonable steps to ensure that the resources of the municipality are used effectively, efficiently and economically. It is further required by section 62 (d) of the MFMA that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented. The act further stipulates 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 MFMA Act 56 of 2003.

## **2. LEGISLATIVE REQUIREMENTS**

The following legislation sets precedence for the establishment and implementation of the Ba-Phalaborwa Local Municipality Unauthorised, Irregular, Fruitless and wasteful expenditure policy and procedures.

- (a) The Municipal Finance Management Act 56 of 2003
- (b) Municipal Finance Management Act Circular 68
- (c) The constitution of the republic of South Africa, 1996, Act 108 of 1996

## **3. Objective**

The objectives of this policy includes amongst other things:

- (a) Emphasising the accountability of employees;
- (b) Ensuring that employees have a clear and comprehensive understanding of the procedures they must follow when dealing with unauthorised, irregular or fruitless and wasteful expenditure;
- (c) Ensuring that resources made available to employees are utilised efficiently, effectively, economically and for authorised official purposes;
- (d) Ensuring that the Municipality's resources are managed in compliance with the MFMA, the Municipal Regulations and other relevant legislation,
- (e) Ensure that irregular, unauthorised or fruitless and wasteful expenditure is detected, processed, recorded, and reported timeously.

#### 4. DEFINITIONS

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

***“Irregular Expenditure”***, in relation to a municipality or municipal entity,

Means—

- (a) expenditure incurred by a municipality or municipal entity in contravention Of, or that is not in accordance with, a requirement of the MFMA, and which has not been regularised in terms of section 170;
- (b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been regularised 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 policy of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been regularised in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of “unauthorised expenditure”

***“Unauthorised Expenditure”***, in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3) of the 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” in the MFMA otherwise than in accordance with any conditions of the allocation; or
- (f) a grant by the municipality otherwise than in accordance with the MFMA;

**“Overspending” –**

- (a) In relation to the budget of a municipality, means causing the operational or capital expenditure incurred by the municipality during 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

**“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.

#### **4. ROLE OF THE ACCOUNTING OFFICER**

MFMA outlines the responsibilities of the Accounting Officers which

Include amongst others:

- (a) To exercise all reasonable care to prevent and detect irregular, unauthorised, fruitless and wasteful expenditure and must for this purpose implement effective, efficient and transparent processes of financial and risk management
- (b) To inform, in writing the Mayor, Executive Committee and Council, as the case may be, if a decision is taken which, if implemented, is likely to result in irregular, unauthorised, fruitless and wasteful expenditure

- (c) On discovery of any irregular, unauthorised, fruitless and wasteful expenditure to report promptly in writing, the particulars of the expenditure to the Mayor and then to Council
- (d) The MFMA further prescribe the process that must be followed to deal with irregular, unauthorised, fruitless, and wasteful expenditure.

## **5. POLICY AND PROCEDURES FOR DEALING WITH IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE**

- 5.1 Any official who becomes aware of or suspects the occurrence of irregular or fruitless and wasteful expenditure should immediately report in writing, the particulars of such expenditure which are within his or her knowledge, to the Accounting Officer or his or her delegate;
- 5.2 Once the Accounting Officer or his or her delegate has received the report alleging the occurrence of irregular or fruitless and wasteful expenditure, the details of such expenditure must be recorded in the register for irregular or fruitless and wasteful expenditure. An example of such register is attached as "Annexure A";
- 5.3 The Accounting Officer or his or her delegate should investigate the alleged irregular or fruitless and wasteful expenditure to determine whether the expenditure meets the definition of irregular or fruitless and wasteful expenditure;
- 5.4 For accounting records purposes, during the investigation, the expenditure must remain in the expense account i.e. the vote of the department. The results of the investigation will determine the appropriate action to be taken regarding such expenditure;
- 5.5 Should the investigation reveal that the expenditure is not irregular or fruitless and wasteful expenditure as defined; the details of the expenditure should be retained in the register for record purposes and to provide a full audit trail. The register must be updated to reflect the outcome of the investigation;
- 5.6 Should the investigation reveal that the expenditure is irregular or fruitless and wasteful expenditure as defined above, the Accounting Officer must immediately report, in writing, the particulars of such expenditure to the Mayor and then to Council. The register must be updated to reflect the outcome of the investigation;
- 5.7 The Accounting Officer- must also include the expenditure in the department's monthly revenue and expenditure report submitted to council in terms of the MFMA;

- 5.8 For accounting records purposes, the irregular or fruitless and wasteful expenditure must be treated as an asset in the books of the municipality until such time as the expenditure is recovered from the responsible person or certified by council as irrecoverable and written off in the Annual Financial Statements.

## **6. POLICY AND PROCEDURES FOR DEALING WITH UNAUTHORISED EXPENDITURE**

- (a) Any employee who becomes aware of, or suspects the occurrence of unauthorised expenditure must immediately report, in writing, such expenditure to the Accounting Officer or his/her delegate;
- (b) On discovery of alleged unauthorised expenditure, such expenditure must be left in the account i.e. relevant vote and the Accounting Officer or his/her delegate should record the details of the expenditure in an unauthorised expenditure register. (Attached as “Annexure B”)
- (c) The Accounting Officer or his/her delegate must investigate the alleged unauthorised expenditure to determine whether the expenditure meets the definition of unauthorised expenditure.
- (d) During the period of investigation, the expenditure must remain in the expenditure account. The results of the investigation will determine the appropriate action to be taken regarding the expenditure.
- (e) Should the investigation reveal that the expenditure is in fact valid expenditure and therefore does not constitute unauthorised expenditure the details of the expenditure should be retained in the register for completeness purposes (and to provide an appropriate audit trail). The register must then be updated to reflect the outcome of the investigation;
- (f) If the investigation indicates that the expenditure is in fact unauthorised expenditure the Accounting Officer must immediately report, in writing, the particulars of the expenditure to the Mayor and then to Council.

- (g) If council subsequently authorises the unauthorised expenditure, the municipality requires no further action as the amount has already been expensed in the statement of financial performance. The register should be updated to reflect the fact that the unauthorised expenditure was authorised.
- (h) If however, the council does not authorise the amount, the Accounting Officer must take effective and appropriate action to recover the amount from the responsible person.

## **7. PROCESS TO AUTHORISE UNAUTHORISED EXPENDITURE**

7.1 In terms of section 32 of the MFMA, ‘unauthorised expenditure’ may only be authorised by the municipal council in an adjustment budget. In this regard, regulation 23(6) of the municipal Budget and Reporting Regulations provides that:

(6) An adjustment budget contemplated in section 28(2)(g) may only authorise unauthorised expenditure as anticipated in 32(2)(a)(i) of the MFMA and must be

- (a) Dealt with as part of the adjustment budget contemplated in sub-regulation (1); and
- (b) A special adjustment budget tabled in the municipal council when the Mayor tables, the annual report in terms of section 127(2) of the act, which 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 MFMA

7.2 This means the following process must be followed:

- a) Unauthorised expenditure that occurs in the first half of the municipal year must be authorised in the main adjustment budget that must be tabled in council before 28 February.
- b) Unauthorised expenditure that occurs in the second half of the financial year, or that occurred in the first half of the year but was not authorised in the main adjustment budget (above), has to be reported in the annual financial statements, audited and then only when the Mayor tables the annual report in council can an adjustment budget be tabled in council to authorise this expenditure.



- c) If the council decides not to authorise the unauthorised expenditure, then it must be recovered from the person liable for that expenditure unless the council certifies that the amount is irrecoverable and it is written off by the council.

7.3 The power to authorise unauthorised expenditure and certify unauthorised, irregular or fruitless and wasteful expenditure as irrecoverable may not be delegated to a council committee or to any administrative committee or official. In this regard, regulation 74 of the Municipal Budget and Reporting Regulations provides that:

(1) A council committee contemplated in section 32(2)(a)(ii) of the Act to investigate the recoverability of any unauthorised, irregular or fruitless and wasteful expenditure must consider-

- (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; and
- (d) Submit a motivation explaining its recommendation to the municipal council for final decision

7.4 Section 32 of the MFMA (nor any other section) does not permit council to authorise or regulate irregular or fruitless and wasteful expenditure under any circumstances

7.5 Irregular or fruitless and wasteful expenditure may only be

- 1) Recovered from the person liable for the expenditure or
- 2) Certified by the council as irrecoverable and written off.

7.6 Under exceptional circumstances, the National Treasury may be approached to condone unauthorised, irregular or fruitless and wasteful expenditure in terms of section 170 of the MFMA

## **8. INVESTIGATIONS AND DISCIPLINARY ACTIONS**

8.1 In terms section 172 and 173 of the MFMA, an Accounting Officer is guilty of financial misconduct and an offence respectively if he or she:

- (a) will fully or negligently fails to take effective and appropriate steps to prevent unauthorised, irregular or fruitless and wasteful expenditure as required by the MFMA;

(b) fails to take effective and appropriate disciplinary steps against an official in the department who makes or permits unauthorised, irregular or fruitless and wasteful expenditure;

(c) fails to report unauthorised, irregular or fruitless and wasteful expenditure in terms of the MFMA.

8.2 As soon as the Accounting Officer becomes aware of an allegation of financial misconduct against an official, the Accounting Officer has a responsibility to ensure that the Mayor initiates an investigation into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts of the applicable legislation.

8.3 in terms of section 172 of the MFMA, an official of a department to whom a duty or power has been assigned commits an act of financial misconduct if that official will fully or negligently fails to perform that duty or exercise that power in line with applicable legislation.

8.4 In terms of the MFMA, the accounting officer must take appropriate and effective disciplinary steps against an official who makes or permits unauthorised, irregular or fruitless and wasteful expenditure.

7.5 When an accounting officer determines the appropriateness of disciplinary steps against an official in terms of applicable legislation, he or she must take into account the following:

(a) circumstances of the transgression;

(b) extent of the expenditure involved;

(c) nature and seriousness of the transgression

## **9. CHARGE OF MISCONDUCT**

9.1 A charge of financial misconduct against an accounting officer or an official must be investigated, heard, and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that Accounting officer or official.

9.2 In the case of departments, the applicable acts and regulations and the relevant collective agreements (bargaining council resolutions) will apply.

## **10. RECOVERY**

- 10.1 Notwithstanding the disciplinary process, the accounting officer must identify the official who is responsible for the unauthorised, irregular or fruitless and wasteful expenditure.
- 10.2 The information would normally be evident from the investigation process.
- 10.3 The amount of the expenditure should be recovered from the official Concerned by taking the following steps:
  - (a) The Accounting Officer must write to the official concerned and request him or her to pay the amount within 30 days or in reasonable instalments.
  - (b) Reasonable instalments will vary from case to case depending on such factors as the total amount involved and the affordability level of the official concerned.
  - (c) The accounting officer is expected to apply his or her discretion judiciously;
- 10.4 Should the official refuse or fail to pay as requested, the matter may be referred to an attorney for recovery
- 10.5 If the amount is not recoverable, the Accounting Officer may request council to certify the debt as irrecoverable and write it off in terms of the MFMA;

## **11. CONSEQUENCE OF NON-COMPLIANCE**

- 11.1 Any official or councillor who does not comply with their reporting duties in terms of this policy could be found guilty of financial misconduct refer to (13)
- 11.2 Any councillor or official of Ba-Phalaborwa Local municipality well be committing an act of financial misconduct if that councillor or official deliberately or negligently makes or permits, or instructs another official of Ba-Phalaborwa Local Municipality to make , an unauthorised , irregular or fruitless and wasteful expenditure

## **12. REPORTING**

- 12.1 The Accounting Officer must comply with the following reporting

Requirements:

12.1.1 Immediately upon discovery of unauthorised, irregular or fruitless, and wasteful expenditure, the Accounting Officer must report the details of the unauthorised, irregular or fruitless, and wasteful expenditure to the Mayor and then to Council.

The report must include the following details:

- (a) amount of the Unauthorised, irregular or fruitless and wasteful expenditure;
- (b) name of the vote from which the expenditure was made;
- (c) reason why the unauthorised, irregular or fruitless and wasteful expenditure could not be avoided;
- (d) name and title of the responsible official;
- (e) details of any recovery steps taken or to be taken by the municipality;
- (f) details of any disciplinary steps taken or to be taken by the municipality,

12.1.2 The Accounting Officer must also include the expenditure in the department's monthly revenue and expenditure report submitted to the Council in terms of the MFMA;

12.1.3 All unauthorised, irregular or fruitless and wasteful expenditure must be reported as a note to the annual financial statements.

### **13. REGULAR REVIEW OF THE IRREGULAR, UNAUTHORISED OR FRUITFUL AND WASTEFUL EXPENDITURE REGISTER**

The unauthorised, irregular or fruitless and wasteful expenditure register should be reviewed on a monthly basis by the Chief Financial Officer of the municipality. This review will ensure that unauthorised, irregular or fruitless and wasteful expenditure are adequately disclosed, dealt with, recorded and that no mathematical errors exists.

### **14. ACCOUNTING TREATMENT OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WATEFUL EXPENDITURE**

- (a) Unauthorised, irregular or fruitless and wasteful expenditure identified during one financial period, but not paid in the specific period should be recorded in the following financial year.
- (b) The cumulative unauthorised, irregular or fruitless and wasteful expenditure incurred at financial year end should be adequately and appropriately disclosed in the financial statements of the municipality.
- (c) Recognition and measurement of unauthorised, irregular or fruitless and wasteful expenditure shall be treated in terms of latest available guidelines for the compilation of the Annual Financial Statements issued to municipalities by National Treasury on an annual basis and be in line with the latest GRAP requirements.

**16. POLICY ADOPTION**

This policy has been considered and approved by the Council of **Ba-Phalaborwa Local Municipality** on this day..... of ..... 20

This policy will take effect at **Ba-Phalaborwa Local Municipality** on the 1<sup>st</sup> of July 2021