

**Buffalo City Metropolitan Municipality  
Draft Policy**



**1. POLICY TITLE**

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

**2. PREAMBLE**

2.1 The purpose of this policy is to define and regulate unauthorised, irregular or fruitless and wasteful expenditure. The aim is to prevent unauthorised, irregular or fruitless and wasteful expenditure; to identify and investigate unauthorised, irregular or fruitless and wasteful expenditure; to respond appropriately in accordance with the law and to address instances of unauthorised, irregular or fruitless and wasteful expenditure conclusively.

2.2. In terms of section 4(2)(a) of the Municipal Systems Act (MSA) the Council has a duty to use the resources of the municipality in the best interest of the local community. This duty is extended to individual Councilors through the Code of Conduct for Councilors which states that a Councilor must:

- i. “perform the functions of office in good faith, honestly and in a transparent manner; and
- ii. “at all times act in the best interests of the community and in such a way that the credibility and integrity of the municipality are not compromised.”

2.3. Municipalities are often challenged with unauthorised, irregular or fruitless and wasteful expenditure.



### **3. STRATEGIC INTENT**

The strategic focus areas (SFA) of the Buffalo City are enshrined in the Buffalo City's Integrated Development Plan (IDP). The five SFA's, also known as the five pillars, are Opportunity Buffalo City, Well-run Buffalo City, Safe Buffalo City, Caring Buffalo City and Inclusive Buffalo City.

This policy supports the following strategic focus areas.

#### **Opportunity Buffalo City**

Provide and maintain economic and social infrastructure to ensure infrastructure-led growth and development.

#### **Well-run Buffalo City**

Ensure financial prudence, with clean audits by the Auditor General.

The underlying tenets of the Well-run Buffalo City are the principles of openness and due process. A well-run Buffalo City is the guarantor of all other government programmes. Citizens need to know that the government works for them, is accountable to them and answers to them at all times. Governments manage public resources and programmes, and as such, they must be constantly scrutinised in public to ensure responsible management.

### **4. LEGAL MANDATES AND REGULATORY FRAMEWORK**

The following Laws and regulations, amongst others, inform this policy:

- (a) Section 29 and Section 32 of the MFMA
- (b) Sections 170 and 173 of the MFMA
- (c) Regulations 23 and 74 of the Municipal Budget and Reporting Regulations
- (d) Relevant GRAP standards
- (e) MFMA Circular 68 of 2013

**Buffalo City Metropolitan Municipality  
Draft Policy**



**5. PURPOSE OF THE POLICY**

This policy will help and guide the Buffalo City in addressing, detecting and preventing unauthorized, irregular, fruitless and wasteful expenditure.

**6. STRATEGIC OBJECTIVES**

- a) Emphasizing 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 utilized efficiently, effectively, economically and for authorized official purposes;
- d) Ensuring that the Municipality's resources are managed in compliance with the MFMA, the Municipal Budget and Reporting Regulations and other relevant legislation; and
- e) Ensure that unauthorised, irregular or fruitless and wasteful expenditure is prevented, detected, processed, recorded, and reported timeously.



## **7. SCOPE OF THE POLICY**

From a responsibility perspective, this policy is relevant to all employees of the Municipality, whether full-time or part-time. It is, however, specifically applicable to the Council, Accounting Officer, Chief Financial Officer, Senior Managers, Officials and all employees. In particular, the duly appointed Directorate and responsibility managers have significant roles in:

- (a) Identifying the identity of the person who is liable for unauthorised, irregular or fruitless and wasteful expenditure.
- (b) Deciding on how to recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure.
- (c) Determining the amount of unauthorised, irregular or fruitless and wasteful expenditure to be recovered, written off or provided for.

## **8. POLICY PRINCIPLES**

Essentially, “unauthorised expenditure” includes overspending on the total amount of the budget, overspending on a vote, the incurring of expenditure unrelated to a vote and the incurring of expenditure for a purpose other than the approved purpose.

A directorate becoming aware of the need to incur unforeseen or unavoidable expenditure must immediately approach the Chief Financial Officer (CFO) with full details on the expenditure, providing information on the consequences of not incurring the expenditure as well as an indication of the expected cost (both for the current year as well as any recurring cost resulting from the event).



**Principle 1: Confirmation of expenditure**

Confirmation that the expenditure does not constitute expenditure that may not be allowed by the Executive Mayor as per section 72(2) of the Municipal Budget and Reporting Regulations (MBRR) must be given by the directorate when approaching the CFO.

**Principle 2: Virement funds**

The CFO will determine whether the cost cannot be dealt with through a process of virement of funds within the relevant votes, if sufficient funds are available for shifting within the vote.

**Principle 3: Approval of expenditure**

Once the Buffalo City Manager has granted approval, the relevant Executive Director will be required to submit a report to the Executive Mayor requesting approval. If approval is granted, the adjustment will be effected on the financial system of the municipality.

**Principle 4: Delays**

The abovementioned process must be dealt with as a priority in order to ensure that administrative delays do not exacerbate the situation.

**Principle 5: Submission of requests**

An adjustment budget, incorporating the approved expenditure, must be submitted to the next council meeting as per of Section 28 of the MFMA.



## **9. DEFINITIONS**

In this Policy, unless the context otherwise indicates:

**“Allocation”**, in relation to a municipality, means –

- (a) a municipality’s share of the local government’s equitable share referred to in section 214(1)(a) of the Constitution;
- (b) an allocation of money to a municipality in terms of section 214(1)(c) of the Constitution;
- (c) an allocation of money to a municipality in terms of a provincial budget; or
- (d) any other allocation of money to a municipality by an organ of state, including by another municipality, otherwise than in compliance with a commercial or other business transaction;

**“Buffalo City”**, means Buffalo City Metropolitan Municipality.

**“CFO”**, means Chief Financial Officer.

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

*‘made in vain’ indicates that the municipality derived no value for money from the expenditure or the use of other resources.* Fruitless and wasteful expenditure must fulfill both the conditions in the definition, namely, that it was made in vain and it would have been avoided had reasonable care been exercised.

**“IDP”**, means Integrated Development Plan

**“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 condoned in terms of section 170;

**Buffalo City Metropolitan Municipality  
Draft Policy**



- (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 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".

**"MBRR"**, means Municipal Budget and Reporting Regulations.

**"MFMA"**, means Municipal Financial Management Act.

**"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.

**"Policy"**, means a guide or framework enabling a municipality to achieve its objectives in the interest of the community. It is a basic principle by which a



municipality is guided.

“**SFA**”, means strategic focus areas.

“**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.

“**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.





## **10. GOVERNANCE ISSUES/AUTHORITY/DELEGATIONS**

### **10.1 The Administration**

The Accounting Officer must annually:

- a) Facilitate the revision of the Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy;
- b) Communicate and make this Policy accessible to all relevant stakeholders;
- c) Monitor and regularly report on the impact of the Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy; and
- d) Accounting Officer is responsible for the interpretation and administration of the. Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy

### **10.2 The Council**

- a) Councilors are required to familiarize themselves with this Policy's contents, make their constituencies aware of it and oversee its implementation by the officials and
- b) Council to approve and adopt the Unauthorized, irregular, fruitless and wasteful expenditure Policy



## **11. POLICY PROCEDURES**

See ANNEXURE A

## **12. COMPETENCE AND CAPACITY TO IMPLEMENT THE POLICY**

12.1 The Policy should be available and communicated to all relevant staff and councillors.

12.2 All relevant staff and councillors must be aware of the prescriptions of the policy.

12.3 All relevant staff and councillors must be aware of the procedures contained in this policy.

12.4 Supervisors/Managers must ensure compliance with this policy

**Buffalo City Metropolitan Municipality  
Draft Policy**



**13. CLASSIFICATION TABLE**

<b>Governance</b>		
<b>Sub classification</b>		
<b>Title</b>	Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy	
<b>File Number</b>		
<b>Related Policies or Procedures</b>	<ul style="list-style-type: none"> <li>• System of Delegations</li> <li>• SCM policy</li> <li>• Debt Collection and Credit policy</li> <li>• Debt writing off policy</li> <li>• Budgets and Medium Term Revenue and Expenditure Framework (MTREF)</li> <li>• Code of conduct</li> </ul>	
<b>Responsible Officer</b>	<ul style="list-style-type: none"> <li>• Accounting Officer</li> </ul>	
<b>Original Authors</b>	<ul style="list-style-type: none"> <li>• T.Sali</li> </ul>	
<b>Current Author</b>		
<b>Date of Approval by Council &amp;</b>	xx/xx/2017	
<b>Council Minute Number</b>	BCMM xxxx	
<b>Effective date</b>	xx/xx/2017 (After Council approval of Policy)	
<b>Last Review Date</b>		
<b>Review Date</b>	<b>xx/xx/2018</b>	



## **POLICY PROCEDURES**

### **1. ROLE PLAYERS AND STAKEHOLDERS**

The role players and stakeholders who will ensure that unauthorised, irregular, fruitless and wasteful expenditure is being dealt with according to legislative requirements and council processes are:

- a) The respective directorate / department who is responsible for preparing a report on the unforeseen and unavoidable expenditure when such expenditure occurs.
- b) The Legal department who is responsible for reviewing the report in order to confirm legal compliance.
- c) The Budget department who is responsible for confirming the financial implications.
- d) The Mayor who is responsible for reviewing, approving and tabling the report at council for noting.

### **2. ROLES AND RESPONSIBILITY**

The MFMA outlines the responsibilities of the Accounting Officers which include amongst others:

- a) To exercise all reasonable care to prevent and detect unauthorised, irregular, 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



unauthorised, irregular fruitless and wasteful expenditure.

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

### **3. REGULATORY CONTEXT**

This policy has been formulated in terms of the provisions of Section 29 of the MFMA and section 71 and 72 of the MBRR, which prescribes the process to be followed for the approval of unforeseen and unavoidable expenditure.

### **4 POLICY DIRECTIVE DETAILS**

*Unforeseen and unavoidable expenditure (MFMA Section 29) The mayor of a municipality may in emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget.*

Any such expenditure-

- (a) Must be in accordance with any framework that may be prescribed;
- (b) May not exceed a prescribed percentage of the approval annual budget;
- (c) Must be reported by the mayor to the municipal council at its next meetings;  
and
- (d) Must be appropriated in an adjustment budget.

If such adjustment budget is not passed within 60 days after the expenditure was



incurred, the expenditure is unauthorised and section 32 applies.

**Authorization of unforeseen and unavoidable expenditure (MBRR Section 71)**

The mayor may authorize expenditure in terms of section 29 of the Act only if:

- (a) The expenditure could not have been foreseen at the time the annual budget of the municipality was passed; and
- (b) The delay that will be caused pending approval of an adjustment budget by the municipal council in terms of section 28(2)(c) of the

Act to authorize the expenditure may –

- result in significant financial loss for the municipality
- cause a disruption or suspension or serious threat to the continuation of municipal services
- lead to loss of life or serious injury or significant damage to property
- obstruct the municipality from instituting or defending legal proceedings on an urgent basis.

The mayor of a municipality may not authorize expenditure in terms of section 29 of the Act if the expenditure -

- (a) was considered by the council, but not approved in the annual budget of the municipality or an adjustments budget;

(b) is required for -

- price increases of goods or services during the year;
- new municipal services or functions during the financial year;
- the extension of existing municipal services of functions during the financial year;
- the appointment of personnel during the financial year; or
- allocating discretionary appropriations to any vote during the financial



year; or

- (c) would contravene any existing council policy; or
- (d) is intended to ratify irregular or fruitless and wasteful expenditure.

**Monetary limits on unforeseen and unavoidable expenditure (MBRR Section 72)**

The amount of expenditure that the executive mayor of a municipality may authorize in terms of section 29 of the Act is limited to –

- (a) 5% of the municipality’s own revenue in the case of a municipality with approved total revenue in its current annual budget not exceeding R250 million;
- (b) the greater of R5 million or 4% of the municipality’s own revenue in the case of a municipality with approved total revenue in its current annual budget greater than R250 million but not exceeding R500 million; and
- (c) R15 million in the case of a municipality with approved total revenue in its current annual budget greater than R500 million.

**5 PROCESS 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 A”.)
- 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.
- g) If Council subsequently condones 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 condoned.
- h) If however, the Council does not condone the amount, the accounting officer must take effective and appropriate action to recover the amount from the responsible person.





## 6. AUTHORISING UNAUTHORISED EXPENDITURE

In considering approval 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 a Council committee for investigation and recommendations?
- (d) Has it been established whether the accounting officer or official or public office bearer that made, permitted or authorized 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 approved? For example:
  - (i) 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;
  - (ii) the mayor, accounting officer or official was acting in good faith when



making and permitting unauthorised expenditure; and

(iii) the municipality has not suffered any material loss as a result of the action.

In these instances, the Council may authorize the unauthorized expenditure. If unauthorised expenditure is approved by Council, there would be no further consequences for the political office-bearers or officials involved in the decision to incur the expenditure.

**Adjustments budgets to approve unauthorized expenditure:**

Council may only approve unauthorized expenditure in an adjustments budget. This can be addressed in three different adjustments budgets as follows:

***Adjustments budget for unforeseen and unavoidable expenditure:***

An adjustments budget to allow Council to provide ex post authorization for unforeseen and unavoidable expenditure that was authorized 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 made. 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 authorized in one of the other adjustments budgets process described below.

(a) ***Main adjustments budget.***

Council may approve unauthorized expenditure in the adjustments budget which may be tabled in Council “at any time after the mid-year budget and performance assessment has been tabled in the Council, but not later than 28 February of the current year”. 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.

(b) ***Special adjustments budget to approve unauthorized expenditure:***



*Council* may approve unauthorized expenditure in a special adjustments budget tabled in Council when the mayor tables the annual report. This special adjustments budget “may only deal with unauthorised expenditure from the previous financial year which the Council is being requested to authorize in terms of section 32(2)(a)(i) of the Act.”

## **7. RECOVERY OF UNAUTHORISED EXPENDITURE**

All instances of unauthorised expenditure must be recovered from the liable official or political office-bearer, unless the unauthorised expenditure has been authorized by Council in an adjustment budget.

(a) The Accounting Officer (or his/her delegate) must determine who the responsible party is from whom the amount should be recovered. This information would normally become evident while performing the investigation.

(b) The Accounting Officer (or his/her delegate) must in writing request that the liable official or political office-bearer to pay the amount relating to such unauthorised expenditure within 30 days. If the person/s fails to comply with the request, the matter may be handed to the municipality’s legal division for the recovery of the debt through normal debt collection process.

## **8. PRINCIPLES ON IRREGULAR EXPENDITURE**

Irregular expenditure is expenditure that is contrary to the Municipal Finance Management Act (Act No. 56 of 2003), the Municipal Systems Act (Act No. 32 of 2000), the Remuneration of Public Office Bearers Act (Act No. 20 of 1998) or is in contravention of the municipality’s supply chain management policy or system of delegation.



### Categories of irregular expenditure

Irregular Expenditure incurred as a result of a non-compliance with a Treasury regulation, the MFMA and the Supply Chain Management Policy.

*Example:*

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 quotations.

Irregular Expenditure incurred as a result of 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.

Irregular Expenditure resulting from non-adherence to the delegation of authority as approved.

Irregular Expenditure incurred as a result of expenditure outside contracts or contracts expired and not extended in terms of MFMA section 116.

Expenditure resulting from non-adherence to an institution's delegation of authority is also regarded as irregular expenditure.

### **Procedures for the condonation of irregular expenditure**

As part of the enclosed procedures (Annexure B), provision is made for accounting officers to forward submissions to the Provincial Treasury or the relevant authority to request condonation for non-compliance with the MFMA or other legislation respectively. The treasury to which the submission must be forwarded will depend on the provision that was contravened. It must, however, be emphasized that submissions requesting condonation for non-compliance must contain detailed motivation as to why the irregular expenditure in question should be considered for condonation, together with steps that have been taken to avoid a recurrence of this type of irregular expenditure.

- (a) It must, however, be emphasized that submissions requesting condonation



of irregular expenditure must contain detailed motivation as to why the irregular expenditure in question should be considered for condonation, together with steps that have been taken to avoid a recurrence of the irregular expenditure.

(b) If the irregular expenditure is subsequently condoned by the relevant authority, no further action is required by the department as the amount has already been expensed in the statement of financial performance.

The register must be updated to reflect that the irregular expenditure was condoned and the notes to the annual financial statements must also be updated to reflect the condoned irregular expenditure.

(c) In instances where condonation for irregular expenditure is not granted by the relevant authority, immediate steps must be taken to recover such expenditure from the relevant person, if he/she is liable in law.

(d) If there is doubt regarding liability in law referred to in (d) above, the accounting officer must consult their in house legal services in this regard.

## **9. PRINCIPLES ON FRUITLESS AND WASTEFUL EXPENDITURE**

- a) No particular expenditure is explicitly identified by the MFMA as fruitless and wasteful.
- b) Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised.
- c) Fruitless and Wasteful expenditure will always emanate from an action instigated by an official that resulted in a financial loss to the institution.



- d) Fruitless and wasteful expenditure can arise from a range of events, activities and actions from a simple oversight in performing an administrative task to a deliberate and/or an intentional transgression of relevant laws and regulations.
  
- e) It seems that the most logical approach to address assess whether or not expenditure can be classified as fruitless and wasteful expenditure is to ask a few elementary questions prior to the spending of municipal funds such as:

**Did the intended spending relate to the formal powers of the municipality?**

A municipality may perform only those functions and powers conferred to it by the Constitution and relevant legislation. Any expenditure incurred relating to an act or conduct exercised outside those functions and powers will result in fruitless and wasteful expenditure notwithstanding sufficient provision has been made on the budget and correct procedures were followed in incurring the expenditure.

**Would the expenditure further the interest of the municipality?**

The expenditure incurred to obtain a service, inventory, asset or to render a service, etc. must have been necessary and ideally unavoidable to enable the Municipality to exercise its functions and powers in accordance with the relevant legislation.

**Was it essential to incur the intended expenditure?**

It is of paramount importance to incur expenditure only when it is really necessary or essential for purposes as mentioned above. One should be satisfied that non incurrence of such expenditure will have a negative impact on the lawful activities of the Municipality.

**Was any other option perhaps available to prevent the intended expenditure or to reduce it?**

This question overlap to some extent with question above but it is more specific in the sense that it put pressure on the Municipality to apply its mind and to consider all possible options. Should it appear after the expenditure has been incurred that a



more effective and perhaps a less expensive option was at the disposal of the Municipality but that it was ignored or disregarded without good cause the expense will be regarded as fruitless and wasteful.

## **10. PROCESS DEALING WITH IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE**

- a) 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;
- b) 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 a register for irregular or fruitless and wasteful expenditure. An example of such register is attached as "Annexure A ";
- c) 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;
- d) For accounting records purposes, during the investigation, the expenditure must remain in the expense account i.e. the vote of the department within the municipality. The results of the investigation will determine the appropriate action to be taken regarding such expenditure. 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

**Buffalo City Metropolitan Municipality  
Draft Policy**



record purposes and to provide a full audit trail. The register must be updated to reflect the outcome of the investigation;

- e) 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. The register must be updated to reflect the outcome of the investigation;
- f) The Accounting Officer must also include the expenditure in the relevant department's monthly revenue and expenditure report submitted to Council in terms of the MFMA; and
- g) For accounting records purposes, the irregular or fruitless and wasteful expenditure must be treated as an asset (debtor) 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.





## **11. ROLE OF COUNCIL COMMITTEE**

- a) In terms of section 74 of the Municipal Budget and Reporting Regulations contained in Government Notice 393 of 17 April, 2009, a Council committee appointed to investigate the recoverability or otherwise of any unauthorised, irregular or fruitless and wasteful expenditure must consider –
  - i. the measures already taken to recover such expenditure;
  - ii. the cost of the measures already taken to recover such expenditure;
  - iii. the estimated cost and likely benefit of further measures that can be taken to recover such expenditure; and
  - iv. submit a motivation explaining its recommendation to the Council for a final decision.
- b) The accounting officer must provide the committee concerned with such information it may require for the purpose of conducting a proper investigation.
- c) The aforesaid committee may only comprise Councilors and should not include political office bearers of the municipality. At least 3 Councilors are required to constitute a committee.
- d) It should be noted that the Council is required by resolution to certify that the expenditure concerned is considered irrecoverable and that it should be written off. This power may not be delegated by the Council.
- e) An audit committee established in terms of section 166 of the Act is not precluded from assisting the appointed committee with its deliberations.



## 12. INVESTIGATIONS AND DISCIPLINARY ACTIONS

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

- i. willfully or negligently fails to take effective and appropriate steps to prevent unauthorised, irregular or fruitless and wasteful expenditure as required by the MFMA;
  - ii. 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; and
  - iii. fails to report unauthorised, irregular or fruitless and wasteful expenditure in terms of the MFMA.
- a) 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.
  - b) 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 willfully or negligently fails to perform that duty or exercise that power in line with applicable legislation.
  - c) 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.
  - d) 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:

- i. circumstances of the transgression;
  - ii. extent of the expenditure involved; and
  - iii. nature and seriousness of the transgression.
- e) Ratification of minor breaches of the procurement process
- f) The accounting officer may ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely technical in nature provided that this provision is included in the municipality's supply chain management policy and the official or committee who committed the breach had the delegated authority to perform the function.

### **Disciplinary charges for Irregular or Fruitless and Wasteful Expenditure**

If, after having followed a proper investigation, the Council concludes that the political office-bearer or official responsible for making, permitting or authorizing irregular expenditure did not act in good faith, then the municipality must consider instituting disciplinary action and/or criminal charges against the liable person/s.

If the irregular expenditure falls within the ambit of the above description, then the Council, mayor or accounting officer (as may be relevant) must institute disciplinary action as follows:

- (i) *Financial misconduct in terms of section 171 of the MFMA*: in the case of an official that deliberately or negligently:



contravened a provision of the MFMA which resulted in irregular expenditure; or made, permitted or authorized an irregular expenditure (due to noncompliance with any of legislation mentioned in the definition of irregular expenditure);

(ii) *Breach of the Code of Conduct for Municipal Staff Members:* in the case of an official whose actions in making, permitting or authorizing an irregular expenditure constitute a breach of the Code; and

(iii) *Breach of the Code of Conduct for Councilors:* in the case of a political office bearer, whose actions in making, permitting or authorizing an irregular expenditure constitute a breach of the Code. This would also include instances where a Councilor knowingly voted in favor or agreed with a resolution before Council that contravened legislation resulting in irregular expenditure when implemented, or where the political office-bearer improperly interfered in the management or administration of the municipality.

Criminal charges arising from an act of Irregular or Fruitless and Wasteful expenditure:

(a) If, after following a proper investigation, the Council concludes that the official or political office-bearer responsible for making, permitting or authorising an instance of irregular expenditure acted deliberately or negligently, then the Council must institute disciplinary procedures and lay criminal charges against the liable official or political office-bearer.

(b) The irregular expenditure was the result of a breach of the definition of irregular expenditure it must be considered in terms of section 173 of the MFMA.



### **13 RECOVERY**

- a) Notwithstanding the disciplinary process, the accounting officer must identify the official who is responsible for the unauthorised, irregular or fruitless and wasteful expenditure.
- b) The relevant information would normally be evident from the investigation process.
- c) The amount of the expenditure should be recovered from the official concerned by taking the following steps:
  - i. The accounting officer must write to the official concerned and request him or her to pay the amount within 30 days or in reasonable installments.
  - ii. Reasonable installments will vary from case to case depending on such factors as the total amount involved and the affordability level of the official concerned.
  - iii. The accounting officer is expected to apply his or her discretion judiciously.
- d) Should the official refuse or fail to pay as requested, the matter may be referred to an attorney for recovery.
- e) 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 municipal adopted policy.
- f) All instances of irregular expenditure must be recovered from the liable official or political office-bearer, unless the expenditure is certified by the municipal



Council, after investigation by a Council committee, as irrecoverable and is written off by the Council.

- g) Irregular expenditures resulting from breaches of the Public Office-Bearers Act is an exception in that the irregular expenditure must be recovered from the political office-bearer to whom it was paid, who might not have been responsible for making, permitting or authorizing the irregular expenditure.
- h) Once it has been established who is liable for the irregular expenditure, the accounting officer must in writing request that the liable political office-bearer or official pay the amount within 30 days or in reasonable installments. If the person fails to comply with the request, the matter must be recovered through the normal debt collection process of the municipality.

#### **14 REPORTING**

- a) The accounting officer must comply with the following reporting requirements:
  - b) attached as “Annexure A”;
  - c) 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. The report must include the following details:
    - I. amount of the unauthorised, irregular or fruitless and wasteful expenditure;
    - II. name of the vote from which the expenditure was made;
    - III. reason why the unauthorised, irregular or fruitless and wasteful



expenditure could not be avoided;

IV. name and title of the responsible official;

V. details of any recovery steps taken or to be taken by the municipality;  
and

VI. details of any disciplinary steps taken or to be taken by the municipality.

d) The accounting officer must also include the expenditure in the relevant department's monthly revenue and expenditure report submitted to the Council in terms of the MFMA.

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

f) The Accounting Officer must record the reasons for any deviations in terms of SCM regulations and report to the next Council meeting and disclose this expenditure in a note to the annual financial statements.

## **15 CRIMINAL SANCTIONS - COUNCILLORS, SENIOR MANAGERS AND OTHER OFFICIALS**

Councilors and officials of the municipality are also subject to criminal sanctions if they:

<b>Section</b>	<b>Offence</b>
79	Deliberately or in a grossly negligent* way contravene or fail to comply with a condition of a delegation of power.
173(5)(a)	Deliberately or in a grossly negligent way impede an accounting officer from complying with a provision of the Act.
173(5)(b)	Deliberately or in a grossly negligent way give incorrect, untrue or

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Draft Policy**



	misleading information material to an investment decision relating to borrowing by the municipality.
173(5)(b)	Illegally withdraw money from a municipal bank account.
173(5)(d)	Fail to disclose material information when the municipality borrows money.
173(5)(e)	Interfere in the supply chain management system.
173(5)(f)	Provide false or misleading information for the purposes of any document which must in terms of a requirement of the Act be submitted to the council, mayor or accounting officer, the Auditor-General, the National Treasury or be made public.

Gross negligence is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both. It is conduct that is extreme when compared with ordinary negligence, which is a mere failure to exercise reasonable care.

**16 CIVIL LIABILITY OF MUNICIPALITY, STRUCTURES, OFFICE BEARERS AND OFFICIALS**

The Act exempts municipalities, their political structures, office-bearers or officials from civil liability for any loss or damage resulting from the exercise of any power or the performance of any function in terms of the Act, provided same was done in good faith. Without limiting liability in terms of the common law or other legislation, a municipality may recover from its political office bearers and officials, any loss or damage suffered by it because of their deliberate or negligent unlawful actions when performing a function of office.





## **17 REGULAR REVIEW OF THE UNAUTHORISED, IRREGULAR, OR FRUITLESS AND WASTEFUL EXPENDITURE REGISTER**

The unauthorised, irregular or fruitless and wasteful expenditure register should be reviewed on a quarterly 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.

## **18 ACCOUNTING TREATMENT OF UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL 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 the 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.
- d) Disclosure of unauthorised, irregular or fruitless and wasteful expenditure
- e) MFMA section 125 require accounting officers and accounting authorities to disclose in the notes to the Annual Financial Statements of the municipality particulars of any material unauthorised, irregular or fruitless and wasteful expenditure incurred during the financial year.
- f) Particulars of any criminal or disciplinary steps taken as a result of such unauthorised, irregular or fruitless and wasteful expenditures should be disclosed in the notes to the Annual Financial Statements.

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Draft Policy**



**ANNEXURE B**  
**Register of Unauthorised, Irregular, Fruitless and Wasteful Expenditure**



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