

MOPANI DISTRICT MUNICIPALITY



CONSEQUENCE POLICY

TABLE OF CONTENTS

| NO | DESCRIPTION | PAGE NO |
|-----------|--|--------------------|
| 1. | PREAMBLE | 3 |
| 2 | DEFINITIONS | 4 |
| 3 | LEGISLATION | 5 |
| 4 | APPLICABILITY OF THE POLICY | 5 |
| 5 | OBJECTIVES OF THE POLICY | 6 |
| 6 | MEASURES TO PREVENT UNAUTHORISED, IRREGULAR FRUITLESS AND WASTEFUL EXPENDITURE | 6 |
| 7 | IDENTIFICATION OF AND DEALING WITH UNAUTHORIZED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE. | 7 |
| 8 | ADDITIONAL MEASURES FOR CONTROL AND TO ENSURE CONSEQUENCES FOR MISCONDUCT | 8 |
| 9 | DISCIPLINARY CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE | 10 |
| 10 | POLICY IMPLEMENTATION | 11 |

1. PREAMBLE

The constitution provides that a Municipal administration as a public administration must be governed by democratic values and principles which amongst other include the promotion of efficiently, economic and effective use of resources, accountable municipal administration and fostering of transparency.

As an organ of state, the Mopani District Municipality collect revenue from the public in the form of rates, taxes, levies, surcharges, duties and service charges. The Municipality also receive grants from National and Provincial spheres of government. The municipality also borrow for Capital expenditure or bridging finance for short term purposes.

In terms of section 4 (2) (a) of the Municipal Systems Act, Council has a duty to use the resources of the Municipality in the best interest of the community. In order to realise the above cited legislative sentiment as expressed by the Act, internal control must be strengthened and applicable legislation complied with.

This policy is intended to promote good governance and to achieve consequence management with a view of prevention; implementation of remedial measures and taking of disciplinary actions in regard to instances unauthorised, irregular, fruitless and wasteful expenditure.

2. DEFINITIONS

2.1. Councillors

Councillors means ordinary councillors including whips of opposition parties.

2.2. Disciplinary Charge

Disciplinary Charge is a charge initiated in terms of, MSA Code of Conduct for Councilors; the Disciplinary Regulations for Senior Managers, Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, SALGBC Disciplinary Procedure.

2.3. Fruitless and wasteful expenditure

Fruitless and wasteful expenditure is expenditure which was made in vain and would have been avoided had reasonable care been exercised. This refers to a transaction, event or condition which was undertaken without value or substance and which did not yield any desired results or outcome.

2.4. Irregular expenditure

Irregular expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation and policies, including –

- Municipal Finance Management Act (MFMA)
- MFMA Regulations and Instructions (and circulars)
- Mopani District Municipal Supply Chain Policy; and
- All other applicable legislation and policies

2.5. 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 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.

2.6. Manager

For purpose of this policy manager means Municipal Manager, Directors, Managers and Supervisor.

- 2.7. Political Office Bearer** means the Mayor, Speaker, Chief Whip, Head of Portfolios, Chairpersons of Portfolio Committees and Municipal Public Accounts Committee.

3. LEGISLATION

This policy has been developed in line with the following enabling legislation and policy documents:

- (a) The Constitution of the Republic of South Africa, 1996, Act No 108 of 1996;
- (b) The Municipal Finance Management Act, 2003, No 56 of 2003;
- (c) Municipal Systems Act, 2000, Act No 32 of 2000;
- (d) MFMA Circular 68;
- (e) MDM Supply Chain Management Policy
- (f) Financial Advisory and Intermediary Services Act, 2002, Act 37 of 2002.
- (g) Financial Intelligence Centre Act, 2001, Act 38 of 2001.
- (h) Prevention and Combating of Corrupt Activities Act No 12 of 2004.

4. APPLICABILITY OF THIS POLICY.

This policy applies to all officials and councillors of Mopani District Municipality. The application of this policy must take into consideration relevant legislation and policy documents.

5. OBJECTIVES OF THE POLICY.

- 5.1 To prevent the occurrence of unauthorised, irregular, fruitless and wasteful expenditure.
- 5.2 To provide measures for identification and investigation of unauthorised, irregular, fruitless and wasteful expenditure.
- 5.3 To respond appropriately with remedial measures in accordance with the law.
- 5.4 To address instances of unauthorised, irregular, fruitless and wasteful expenditure through implementation of disciplinary policy and procedures.
- 5.5 To address related matters which may lead to incurring of loss by the municipality.

6. MEASURES TO PREVENT UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE.

- 6.1 Council will implement measures to prevent unauthorized, irregular, fruitless and wasteful expenditure as follows:
 - (a) Conduct training on Supply Chain Management for all employees who are in one way or another involved or whose duties entail Supply Chain processes.
 - (b) Conduct yearly induction and / or re-induction course to all employees involved or whose duties entail supply chain processes.
 - (c) Employees must be made to fully understand their responsibilities and training programmes will be implemented to ensure that they are properly capacitated.
 - (d) Managers must ensure that expenditure, with special emphasis on issues of unauthorized, irregular, fruitless and wasteful expenditure, is discussed in Departmental and Divisional meetings.
 - (e) Managers must share best practices in prevention of unauthorized, irregular fruitless and wasteful expenditure.

- (f) The Municipality must raise awareness of fraud and/or corruption and adherence to policies of council in order to enforce the principles of consequence management.

7. IDENTIFICATION OF AND DEALING WITH UNAUTHORIZED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE.

- 7.1 The Risk and Compliance Office must in their daily activities ensure identification of cases of unauthorized, irregular, fruitless and wasteful expenditure.
- 7.2 Managers must scrutinize procurement processes within their department, division and units with a view to identify unauthorized irregular, fruitless and wasteful expenditure.
- 7.3 Once an unauthorized, irregular, fruitless and or wasteful expenditure is identified, the relevant manager must ensure that the matter is submitted to Council for consideration.
- 7.4 Once an unauthorized, irregular, fruitless and or wasteful expenditure is identified, it may be investigated by risk and compliance and audit divisions and/or appropriate structure established for such purposes.
- 7.5 Council will be guided by the Municipal Finance Management Act, Act 56 of 2003 in dealing with unauthorized, irregular fruitless and wasteful expenditure.
- 7.6 Council may authorize an unauthorized expenditure after consideration of various factors relating to the unauthorized expenditure.
- 7.7 Unless the unauthorized expenditure has been authorized by council in an adjustment budget, it must be recovered from liable official or political office-bearer.
- 7.8 Council may write off irregular expenditure if after an investigation by Council Committee the irregular expenditure is certified as irrecoverable.

8. ADDITIONAL MEASURES TO FOR CONTROL AND TO ENSURE CONSEQUENCES FOR MISCONDUCT

8.1 Internal Audit

Other roles of Internal Audit include, but are not limited to:

- 8.1.1 Examining root causes of the control breakdown to determine if similar exposure remains elsewhere in Mopani District Municipality; and
- 8.1.2 Assist in strengthening controls to help prevent and detect similar instances of fraud and/or misconduct in future and to prevent and detect such incidents in other units/departments.

8.2 Legal

8.2.1 The Legal division must consider recovering any losses as required by section 32 of the Municipal Finance Management Act 56 of 2003 (Stipulated in section 1.14) via alternative means, such as:

- (a) Recovering the loss from any monies due to the individual on termination if the perpetrator is an employee, including the individual's accrued benefits in GTM's Pension Fund/Scheme;
- (b) If the individual will not voluntarily make good the loss, consideration should be given to taking civil action to recover the loss;
- (c) Asset forfeiture procedures; or
- (d) In the event of criminal proceedings, an application for an order in terms of section 300 of the Criminal Procedure Act No 51 of 1977.

8.2.2 It is also the responsibility of the Legal division to ensure, where applicable, that compliance with the terms of section 34 of the Prevention and Combating of Corrupt Activities Act No 12 of 2004.

8.3 Accounting Officer

All fraud losses must be reported to the Municipal Manager immediately in order to be recorded and reported as "Fruitless and Wasteful expenditure" in line with the requirements of section 32 of the Municipal Finance Management Act 53 of 2003.

8.4 Case management

Mopani District Municipality will maintain a fraud and/or corruption reporting system to enable the Council and Municipal Manager to:

- (a) Fulfill its corporate governance responsibilities;
- (b) Appraise itself as well as senior management of the full impact of fraud and/or corruption; and
- (c) Identify trends of suspicious activity, areas of particular risk or malicious non-adherence to policies of council.

This system is inter alia, utilized to record suspicion/incident reporting, case registration, case monitoring, and investigation results in a uniform manner.

8.5 Recoveries and liabilities

Recoveries should be made in line with the requirements of Section 32 of the Municipal Finance Act 53 of 2003, as follows:

8.6 Public Relations

The accounting officer must periodically communicate to the wider employee population about appropriate actions taken against employees who committed acts of fraud and/or corruption, or omitted or disregarded adherence to policy.

9 DISCIPLINARY CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

9.1. Every investigation will take into consideration the role played by any official or political office bearer in the procurement process leading to an unauthorized, irregular, fruitless and wasteful expenditure.

9.2. If, after having investigated and considered unauthorized, irregular, fruitless and wasteful expenditure, council concludes that an official or political office bearer or councilor did not act in good faith in permitting or authorizing

irregular expenditure, the municipality must consider instituting disciplinary action and/ or criminal charges against liable persons.

9.3. When disciplinary actions are taken against an official or political office bearer or councilor, the following must be taken into account:

- (a) the circumstances of the transgression;
- (b) the extent of the expenditure involved; and
- (c) the nature and seriousness of the transgression.

9.4. In an event where disciplinary actions are taken, depending on the position of the person involved, whether is a political office bearer, senior manager or other officials, the Code of Conduct for Councilors, the Disciplinary Regulations for Senior Managers, 2010, contained in Government Notice 344 as published in the Government Gazette No. 34213 of 21 April 2011, Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, Government Gazette No. 37682 of 30 May 2014 and SALGBC Disciplinary Procedure.

10 POLICY MONITORING AND EVALUATION

- 10.1 This policy shall be implemented and effective once approved by Council.
- 10.2 Non-compliance to the stipulations contained in this policy shall be regarded as breach of Code of Conduct, which shall be dealt with in terms of the Code of Conduct.
- 10.3 Head of Corporate Services shall carry out the monitoring and evaluation of the policy's implementation.

11 DEFAULT

- 11.1 Disciplinary measures will be applied to any official who fail to comply with the content of the policy.
- 11.2 Any dispute arising from this policy due to interpretation of wording or phrasing must be referred to the Local Labour Forum for adjudication.

12 INCEPTION DATE

This policy will come into effect on the date of adoption by the council

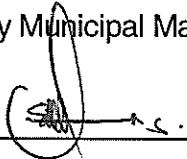
13. REVIEW OF THE POLICY

The policy shall be reviewed after five (5) Years or as and when necessary.

14. POLICY APPROVAL

This policy was developed in consultation with the Local Labour Forum.

Authorised by Municipal Manager:

Signature:  Date: 2023/07/01

Approved by Municipal Council:

Signature:  Date: 2023/07/01