

**PIXLEY KA SEME
DISTRICT MUNICIPALITY**



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

**PIXLEY KA SEME DISTRICT MUNICIPAL UNAUTHORISED, IRREGULAR,
FRUITLESS AND WASTEFUL EXPENDITURE POLICY**

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TABLE OF CONTENTS

ABBREVIATIONS/ACRONYMS

- 1. INTRODUCTION**
- 2. OBJECTIVE OF THE POLICY**
- 3. ENABLING LEGISLATION**
- 4. APPLICATION OF THIS POLICY**
- 5. DEFINITIONS**
- 6. UNAUTHORISED EXPENDITURE**
- 7. IRREGULAR EXPENDITURE**
- 8. FRUITLESS AND WASTEFUL EXPENDITURE**
- 9. REPORTING ON UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**
- 10. MAINTAINING OF REGISTER FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**
- 11. INVESTIGATION AND REGULARISING OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**
- 12. DISCIPLINARY AND CRIMINAL CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**
- 13. RECOVERY UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**
- 14. CONSEQUENCES OF NON-COMPLIANCE**

U.K.

15. PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

16. COMMENCEMENT

ABBREVIATIONS / ACRONYMS

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

CFO	-	Chief Financial Officer
COO	-	Chief Operations Officer
EM	-	Executive Mayor
MIG	-	Municipal Infrastructure Grant
MFMA	-	Municipal Finance Management Act, 2003, No. 56 of 2003
MPAC	-	Municipal Public Account Committee
MM or AO	-	Municipal Manager or Accounting Officer
SAPS	-	South African Police Services
MSA	-	Municipal Systems Act, 2000, No. 32 of 2000
Structures Act	-	Municipal Structures Act, 1998, No. 117 of 1998
RPOBA	-	Remuneration of Public Office Bearers Act
Policy expenditure	-	Policy on unauthorised, irregular, fruitless and wasteful expenditure
MBRR	-	Municipal Budget Rules and Regulations



1. INTRODUCTION

1.1 In terms of Section 62 of the Municipal Finance Management Act No. 56 of 2003 (herein referred to as "MFMA"), the accounting officer is responsible for managing the financial affairs of Pixley Ka Seme District Municipality and he/she must, for this purpose, inter alia:

- a) Take all reasonable steps to ensure that unauthorised, irregular, fruitless and wasteful expenditure and other losses are prevented; and
- b) Ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official or councillor of the Municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA.

1.2 This is to ensure the effective, efficient and transparent systems of financial, risk management and internal control.

2. OBJECTIVE OF THE POLICY

2.1 This document sets out the Municipality's policy and procedures with regards to unauthorised, irregular, fruitless and wasteful expenditure.

2.2 This policy aims to ensure that, amongst other things:

- a) Unauthorised, irregular, fruitless and wasteful expenditure is detected, processed, recorded and reported in a timely manner;
- b) Officials and councillors have a clear and comprehensive understanding of the procedures they must follow when addressing unauthorised, irregular, fruitless and wasteful expenditure;
- c) The Municipality's resources are managed in compliance with the MFMA, the municipal regulations and other relevant legislation; and
- d) All officials and councillors are aware of their responsibilities in respect of unauthorised, irregular, fruitless and wasteful expenditure.

3. ENABLING LEGISLATION

The following enabling legislation sets the precedent for the development of the Municipality's unauthorised, irregular, fruitless and wasteful expenditure policy:

- a) The Constitution of the Republic of South Africa, 1996, CT No. 108 of 1996;
- b) The Municipal Finance Management Act, 2003, No. 56 of 2003;
- c) The Remuneration of Public Office Bearers Act;
- d) Municipal Systems Act, 2000, Act No. 32 of 2000;
- e) MFMA Circular 68;
- f) Any other legislation, regulation or circular that may impact this policy; and
- g) Municipal Structures Act No. 117 of 1998.

4. APPLICATION OF THIS POLICY

4.1 This policy applies to all officials and councillors of the Municipality.

4.2 This policy should be read in conjunction with the following of the Municipality:

- a) Delegations of Authority;
- b) Procedures for unauthorised, irregular, fruitless and wasteful expenditure;
- c) Policy on financial misconduct;
- d) Breach of the Code of Conduct for Municipal Staff Members; and
- e) Breach of the Code of Conduct for Councillors.

4.3 Officials and Councillors must ensure all instances of unauthorised, irregular expenditure as well as fruitless and wasteful expenditure is prevented where possible, and is detected and reported in a timely manner.

5. DEFINITIONS

Except if otherwise indicated:

“Councillor” means member of the municipal council of the Municipality.

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

“Financial misconduct” means any misappropriation, mismanagement, waste or theft of the finances of a municipality, and also includes any form of financial misconduct specifically set out in Section 171 and 172 of the Act.

“Irregular expenditure” in relation to a municipality or municipal entity means:

- a) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of Section 170;
- b) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of this Act;
- 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 20 of 1998);
- d) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the Municipality or any other municipality's by-laws giving effect to such

U.K.

- policy, and which has not been condoned in terms of such policy or by-law; or
- e) Excludes expenditure by a municipality which falls within the definition of “unauthorised expenditure”.

“Official” in relation to the Municipality, means:

- a) An employee of Pixley Ka Seme District Municipality;
- b) A person seconded to the Municipality or to work as a member of the staff of the Municipality; or
- c) A person contracted by the Municipality to work as a member of the staff of the Municipality or otherwise than as an employee.

“Overspending” means:

- a) In relation to the budget of a municipality, means causing the operational or capital expenditure incurred by the Municipality during a 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 in subsection (5) of that section.

“Political Office Bearer” means the speaker, executive mayor, mayor, deputy mayor, or a member of the executive committee as referred to in the Municipal Structures Act.

“Prohibited expenditure” in relation to this policy means unauthorised, irregular, fruitless and wasteful expenditure.

“Senior manager” has the meaning assigned to it in Section 1 of the MFMA and in relation to the Municipality refers to Executive Managers and CFO.

“Unauthorised expenditure” means any expenditure incurred by a municipality otherwise than in accordance with Section 15 or 11(3), 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;

U.R.

- 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.

"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.

6. UNAUTHORISED EXPENDITURE

6.1 Pixley Ka Seme District Municipality may incur expenditure only in terms of an approved budget and within the limits of the amounts appropriated for the different votes in an approved budget.

6.2 Expenditure incurred within the ambit of the Municipality's virement policy is not regarded as unauthorised expenditure.

6.3 Any expenditure that has not been budgeted for, expenditure that is not in terms of the conditions of an allocation received from another sphere of government, economic entity or organ of state and expenditure in the form of a grant that is not permitted in terms of the MFMA is regarded as unauthorised expenditure

6.4 Unauthorised expenditure would include:

- a) Any overspending in relation to both the operational and capital budget of the municipality;
- b) Overspending in relation to each of the votes on both the operational and capital budget;
- c) Use funds allocated to one department for purpose of another department or for purpose that are not provided for in the budget;
- d) Funds that have been designated for a specific purpose or project within a departments vote may not be 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) Unforeseen and unavoidable expenditure not authorised within an adjustment budget within 60 days after the expenditure was incurred; and
- g) Any overspending on non-cash items, for example depreciation, impairments, provisions.

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

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6.6 Expenditure that are NOT classified as unauthorised expenditure

Given the definition of unauthorised expenditure, the following are examples of expenditure that are **NOT** unauthorised expenditure:

- i. Any over-collection on the revenue side of the budget as this is not an expenditure; and
- ii. Any expenditure incurred in respect of:
 - 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 (read in conjunction with supporting Table SA1) of the MBRR; and
 - overspending of an amount allocated by standard classification on the main budget Table A5 (Budgeted Capital Expenditure by vote, standard classification and funding) of the MBRR so long as it does not result in overspending of a "vote" on the main budget Table A5.

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

- a) To defray expenditure authorised in terms of Section 26(4) of the MFMA, [*Section 26: Consequences of failure to approve a budget before the start of the budget year*];
- b) To defray unforeseen / unavoidable expenditure circumstances strictly in accordance with Section 29(1) of the MFMA [*Section 29: Unforeseen and unavoidable expenditure*] failing which the unforeseen / unavoidable expenditure is unauthorised;
- c) Re-allocation of funds and the use of such funds in accordance with a council approved virement policy;
- d) Expenditure incurred from a special bank account for relief, charitable or trust purposes provided of course that it is done strictly in accordance with Section 12 of the MFMA [*Section 12: Relief, charitable, trust or other funds*];
- e) To pay over to a person or organ of state money received by the Municipality on behalf of that person or organ of state, including –

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- (i) money collected by the Municipality on behalf of that person or organ of state by agreement; or
- (ii) any insurance or other payments received by the Municipality for that person or organ of state;
- f) To refund money incorrectly paid into a bank account;
- g) To refund guarantees, sureties and security deposits;
- h) For cash management and investment purposes in accordance with section 13 [*Section 13: Cash Management and Investments*]; and
- i) To defray increased expenditure in terms of section 31 [*Section 31: Shifting of funds between multi-year appropriations*].

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

7. IRREGULAR EXPENDITURE

7.1 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), and the Public Office Bearers Act (Act No. 20 of 1998) or is in contravention of the Municipality's Supply Chain Management Policy.

7.2 Irregular expenditure is actually expenditure that is in violation of some or other procedural/legislative requirement as specified in the MFMA.

7.3 Irregular expenditure excludes unauthorised expenditure.

7.4 Although a transaction or an event may trigger irregular expenditure, a Council will only identify irregular expenditure when a payment is made. The recognition of irregular expenditure must be linked to a financial transaction.

7.5 If the possibility of irregular expenditure is determined prior to a payment being made, the transgression shall be regarded as a matter of non-compliance.

7.6 Remuneration of councillors

7.6.1 Payments to Municipal councillors cannot exceed the upper limits of the salaries, allowances and benefits for those councillors as promulgated in the Public Office Bearers Act.

7.6.2 Any remuneration paid or given in cash or in kind to a person as a councillor or as a member of a political structure of the Municipality otherwise than in accordance with 7.6.1 including any bonus, bursary, loan, advance or other benefit, must be classified as irregular expenditure.

7.7 Irregular staff appointments

7.7.1 No person may be employed in the Municipality unless the post, to which he or she is appointed, is provided for in the Municipality's organogram as approved by the council.

7.7.2 Any person, who takes a decision contemplated in subparagraph (7.7.1) knowing that such decision is unlawful, will be held personally liable for any irregular expenditure that the municipality may incur as a result of such invalid decision.

7.8 Officials and councillors must ensure that all instances of irregular expenditure are prevented where possible, and are detected and reported in a timely manner.

8. FRUITLESS AND WASTEFUL EXPENDITURE

8.1 All officials and councillors must always act cautiously when spending public money and ensure that they abide by the public and accountability principles which are to promote “efficient, economic and effective use of resources and the attainment of value for money”.

8.2 Fruitless and wasteful expenditure is expenditure that was made in vain and would have avoided had reasonable care been exercised.

8.3 This type of expenditure is incurred where no value for money is received for expenditure or the use of resources. No particular expenditure is explicitly identified by the MFMA as fruitless and wasteful

8.4 Expenditure incurred that has been budgeted for (authorised) and was not regarded as irregular expenditure could be classified as fruitless and wasteful expenditure.

8.5 An expense is only fruitless and wasteful in terms of this policy if:

- (i) It was made in vain (meaning that the municipality did not receive value for money); and
- (ii) and would have been avoided had reasonable care been exercised (meaning that the official or councillor concerned did not carelessly or negligently cause the expenditure to be incurred by the municipality, furthermore another official or councillor under the same circumstances would not have been able to avoid incurring the same expenditure).

In determining whether expenditure is fruitless and wasteful, officials and councillors must apply the requirements of reasonable care as an objective measurement to determine whether or not a particular expenditure was fruitless and wasteful, that is –

- a) Would the average man (in this case the average experienced official or councillor) have incurred the particular expenditure under exactly the same conditions or circumstances? And
- b) is the expenditure being incurred at the right price, right quantity, right time and right quality.

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8.6 Officials and councillors must ensure that all instances of fruitless and wasteful expenditure are prevented where possible, and are detected and reported in a timely manner.

9 REPORTING ON UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

Reporting of unauthorised, irregular, fruitless and wasteful expenditure must be done at the appropriate level, as this could constitute financial misconduct as follows:

- a) a Councillor of a municipality, must be reported to the Speaker of the council;
- b) the municipal manager and speaker, must be reported to the mayor;
- c) executive managers must be reported to the municipal manager;
- d) all cases of prohibited expenditure reported as per a), b) and c) above must be referred to MPAC for investigation unless the allegations are frivolous, vexatious, speculative or obviously unfounded; and
- e) officials below executive management level of the municipality must be reported to the CFO unless in the professional opinion of the CFO or MM the nature of the amount of the prohibited expenditure warrants the case to be referred to MPAC.

All reports made by officials and councillors must be treated with utmost confidentiality.

The MM 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 in the municipality:

- a) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and
- b) the steps that have been taken:
 - To recover or rectify such expenditure; and
 - To prevent a recurrence of such expenditure.

All expenditure classified as unauthorised, irregular, fruitless and wasteful expenditure must be reported to:

- The Finance Portfolio Committee;
- Mayoral Committee;
- Council;
- MPAC; and
- Audit Committee.

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In accounting for unauthorised, irregular, fruitless and wasteful expenditure, the MM or delegated officials (as may be relevant) must ensure that:

- All confirmed unauthorised, irregular, fruitless and wasteful expenditure must be recorded in separate account, in the accounting system of the municipality, created for each of the above types of expenditure;
- All such expenditure is disclosed in the annual financial statements as required by the MFMA and Treasury requirements; and
- Details pertaining to unauthorised, irregular, fruitless and wasteful expenditure must be disclosed in the Municipality's Annual Report.

10 MAINTAINING OF REGISTER FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

Council must maintain a register of all incidents of unauthorised, irregular, fruitless and wasteful expenditure:

- This register will be maintained by the CFO for all officials other than the CFO and MM;
- A separate register must be maintained by the MM for expenditure incurred by the CFO;
- A separate register must be maintained by the Mayor for expenditure incurred by the MM; and
- The Speaker will maintain a register for expenditure incurred by the Mayor and Councillors.

These registers must be updated as the incidents occur.

11 INVESTIGATION OF UNAUTHORISED AND IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

MPAC must institute an investigation of all prohibited expenditure reported in terms of clause 9.1(d), above.

The CFO must seek the Municipal Manager's approval to investigate all prohibited expenditure reported to him/her in terms of clause 9.1(e) unless the allegations are frivolous, vexatious, speculative or obviously unfounded.

Once the nature of the expenditure is confirmed as unauthorised, irregular, fruitless and wasteful expenditure, the person to whom the prohibited expenditure was reported in terms of clause 9.1 above must institute the necessary procedures which could include disciplinary as well as criminal proceedings.



12 DISCIPLINARY AND CRIMINAL CHARGES FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

After having followed a proper investigation, as per paragraph 11 above, the MPAC or the CFO as the case may be, must determine whether there is a prima facie case and that a Councillor or official made, permitted or authorised prohibited expenditure.

If a prima facie case has been established, as per paragraph 12.1 above, then MPAC, mayor or municipal manager (as may be relevant) must institute disciplinary action as follows:

- 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 prohibited expenditure; or
 - made, permitted or authorised an irregular expenditure (due to non-compliance with any legislation mentioned in the definition of irregular expenditure);
- Breach of the Code of Conduct for Municipal Staff Members: in the case of an official whose actions in making, permitting or authorising a prohibited expenditure constitute a breach of the Code; and
- Breach of the Code of Conduct for Councillors: in the case of a Councillor, whose actions in making, permitting or authorising an irregular expenditure constitutes a breach of the Code. This would also include instances where a councillor knowingly voted in favour or agreed with a resolution before council that contravened legislation resulting in prohibited expenditure when implemented, or where the Councillor improperly interfered in the management or administration of the municipality.

The MPAC, mayor or municipal manager or delegated officials (as may be relevant) must promptly report to the SAPS all cases of alleged:

- Irregular expenditure that constitute a criminal offence; and
- Theft and fraud that occurred in the municipality.

The Mayor must take all reasonable steps to ensure that all cases referred to in the above paragraph are reported to the South African Police Service if:

- The charge is against the MM; or
- The MM fails to comply with the above paragraph.



13 RECOVERY UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

The MM or delegated person must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure:

- in the case of unauthorised expenditure, is
 - ✓ authorised in an adjustment budget; or
 - ✓ certified by the municipal council, after investigation by MPAC, as irrecoverable and is written off by council; and
- in the case of irregular or fruitless and wasteful expenditure, is after investigation by MPAC, certified by council as irrecoverable and written off by council.

Irregular expenditures resulting from breaches of the Public Office Bearers Act must be recovered from the Councillor to whom it was paid.

Once it has been established who is liable for the unauthorised, irregular, fruitless and wasteful expenditure, the Municipal Manager must in writing request that the liable Councillor or official pay the amount within 30 days or in reasonable instalments.

Without limiting liability in terms of the common law or other legislation, the MM must recover any such expenditure, in full, from the official or councillor where:

- in case of a councillor, the councillor knowingly or after having been advised by the MM that the expenditure is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, instructed an official of the Municipality to incur the expenditure; and
- in case of the official, the official deliberately or negligently incurred such expenditure.

The fact that the Council may have approved the expenditure for writing off or deemed it to be irrecoverable is no excuse in:

- either disciplinary or criminal proceedings against a person charged with the commission of an offence or a breach of the MFMA relating to such unauthorised, irregular or fruitless and wasteful expenditure; or
- recovery of such expenditure from such person.

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

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14 CONSEQUENCES OF NON-COMPLIANCE

Any official or councillor who does not comply with their reporting duties in terms of this policy could be found guilty of Financial Misconduct.

Any councillor or official of the Municipality will be committing an act of financial misconduct if that councillor or official deliberately or negligently makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure.

15 PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

If any official or councillor who has complied with this policy and as a result thereof has been subjected to intimidation, victimisation, threats such official or councillor should immediately report such threats, victimisation or intimidation immediately to the MM or the Mayor where applicable.

The MM or Mayor must immediately take appropriate action to ensure that protection of the official or councillor after receiving the above report.

Where the nature of the threats warrants such action. The threats should be reported to the SAPS by the official concerned, the MM or the Mayor, where applicable.

16 COMMENCEMENT

This Policy takes effect on 01 July 2024.

EXECUTIVE MAYOR:



27 March 2024

DATE POLICY REVIEWED:

DATE POLICY APPROVED:

16 May 2024

