



LEPELLE-NKUMPI LOCAL MUNICIPALITY

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY FOR THE 2024/2025 FINANCIAL YEAR

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ABRREVIATIONS

CFO	- Chief Financial Officer
LNLM	- Lepelle-Nkumpi Local Municipality
MFMA	-Municipal Finance Management Act No.56 of 2003
MPAC	- Municipal Public Accounts Committee
MM or AO	-Municipal Manager or Accounting Officer
SAPS	- South African Police Services
MSA	-Municipal Systems Act No.32 of 2000
Structures Act	- Municipal Structures Act No 117 of 1998
RPOBA	- Remuneration of Public Office Bearers Act.
Policy Policy	- Unathorised, Irregular, Fruitless and Wasteful Expenditure
UIFWe	- Unathorised, Irregular, Fruitless and Wasteful Expenditure
MBRR	- Municipality Budget Rules and Regulations

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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 to managing the financial affairs of Lepelle-Nkumpi Local 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 instated against any official or councillor of Lepelle-Nkumpi Local 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 controls.

2. OBJECTIVE

- 2.1. This document sets out Lepelle-Nkumpi Local 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) UIFWe is detected, processed, recorded and reported in a timely manner.
 - (b) Officials and councillors have a clear and comprehensive understanding of the procedure they must follow when addressing UIFWe.
 - (c) Lepelle-Nkumpi Local Municipality's resources are managed in compliance with the MFMA, municipal regulations and other legislation;
And
 - (d) All officials and councillors are aware of their responsibilities in respect of UIFWe.

3. ENABLING LEGISLATION

The following enabling legislation sets the precedent for development of Lepelle-Nkumpi Local Municipality's UIFWe policy:

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

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4. APPLICATION OF THIS POLICY

- 4.1.1. This policy applies to all officials and councillors of Lepelle-Nkumpi Local Municipality
- 4.1.2. This policy should be read in conjunction with the following of Lepelle-Nkumpi Local Municipality:
- (a) Delegation of Authority
 - (b) Procedures for UIFWe
 - (c) Approved Lepelle-Nkumpi Local Municipality Supply Chain Management Policy
 - (d) Breach of the Code of Conduct for Municipal Staff Members; and
 - (e) Breach of the Code of Conduct for Councillors
- 4.1.3. Officials and Councillors must ensure all instances of UIFWe is prevented where possible, and is detected and reported in a timely manner.

5. DEFINITIONS

Except if otherwise indicated:

“Financial misconduct” means any misappropriation, mismanagement, waste or theft of the resources of the municipality, and any form of financial misconduct specifically set out in sections 171 and 172 of the Act.

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

“Irregular expenditure” in relation to a municipality 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; 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 the Act;
- (b) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office Bearers Act No.20 of 1998;
- (c) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the approved Supply Chain Management Policy of Lepelle-Nkumpi Local Municipality or any municipality's by-law giving effect to such policy, and which is not condoned in terms of such policy or by-law; or
- (d) Exclude expenditure by a municipality which falls within the definition of unauthorised expenditure

“Unauthorised expenditure” means: any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3), and includes-

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- (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 function 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), (d) of the definition of allocation otherwise than in accordance with any of the allocation; or
- (f) a grant by Lepelle-Nkumpi Local Municipality otherwise than in accordance with the MFMA.

"Prohibited expenditure" in relation to this policy means unauthorised, irregular, fruitless and wasteful expenditure;

"Overspending" means:

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

"Councillor" means member of municipal council of Lepelle-Nkumpi Local Municipality.

"Political Office Bearer" means the Speaker, Executive Mayor/Mayor, Deputy Executive Mayor/Mayor, or a member of the executive committee as referred to in the Municipal Structures Act.

"Senior Manager" has a meaning assigned to it in section 1 of the MFMA and in relation to Lepelle-Nkumpi Local Municipality refers to Executive Managers including the CFO.

"Official" in relation to Lepelle-Nkumpi Local Municipality, means:

- (a) an employee of Lepelle-Nkumpi Local Municipality
- (b) a person seconded to Lepelle-Nkumpi Local Municipality or to work as a member of the staff of the Lepelle-Nkumpi Local Municipality; or

- (c) a person contracted by Lepelle-Nkumpi Local Municipality to work as a member of staff of the Lepelle-Nkumpi Local Municipality or otherwise than as an employee.

6. UNAUTHORISED EXPENDITURE

- 6.1. Lepelle-Nkumpi Local 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 in line with the approved Lepelle-Nkumpi Local 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 condition 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 an unauthorised expenditure.
- 6.4. Unauthorised expenditure would include:
- (a) Any overspending in relation to both operational budget and capital budget of the municipality;
 - (b) Overspending in relation to each of the vote on both operational budget and capital budget
 - (c) Use funds allocated to a department for purposes of another department or for purposes that are not provided for in the budget;
 - (d) Any use of conditional grant funds for a purpose other than that specified in the relevant conditional grant framework is classified as unauthorised expenditure;
 - (e) Any grant to an individual or household unless it is in terms of the municipality's approved indigent policy or bursary policy.
 - (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.
- 6.5. Expenditures that are not classified as unauthorised expenditure are:
- i. Any collection on the revenue side of the budget as this is not an expenditure;
 - ii. Any of the transactions mentioned in section 11(1)(a) to (j) of the MFMA.
 - iii. Re-allocation of funds and use of such funds in accordance with an approved virement policy;
 - iv. 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
- v. 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 s vote on the main budget Table A5.

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

6.7.1.1 To defray expenditure authorised of sec (4) of the MFMA, [Section 26: Consequences of failure to approve a budget before the start of the budget year]

6.7.1.2 To defray unforeseen/ unavoidable expenditure circumstances strictly in accordance with Section 29(1) of the MFMA [Section 29: Unforeseen and unavoidable expenditure] failing which unforeseen/unavoidable expenditure is unauthorised;

6.7.1.3 Re-allocation of funds and the use of such funds in accordance with council approved virement policy;

6.7.1.4 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]:

6.7.1.5 To pay over to a person or organ of state money received by the Lepelle-Nkumpi Local Municipality on behalf of that person or organ of state including-

6.7.1.6 Money collected by the Lepelle-Nkumpi Local Municipality on behalf of that person or organ of state by agreement; or any insurance or other payments received by the Lepelle-Nkumpi Local Municipality for that person or organ of state;

6.7.1.7 To refund money directly paid into a bank account;

6.7.1.8 To refund guarantees, sureties and security deposits;

6.7.1.9 Any incidental expenditure incurred and is further approved in the special adjustment budget.

6.7.10 For cash management and investment purposes in accordance with section 13 [Section 13: Cash management and Investments]: and

6.7.11 to defray increased expenditure in terms of Section 31

[Section 31: Shifting of funds between multi-year appropriations]

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6.8 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 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 another procedural/legislative requirement as specified in the MFMA

7.3 Irregular Expenditure excludes unauthorised expenditure

7.4 The Accounting Officer will identify irregular expenditure when expense has been incurred in terms of GRAP 1.

7.5 Remuneration of Councillors

7.5.1 Payments to Lepelle-Nkumpi Local Municipality councillors cannot exceed the upper limits of the salaries, allowances and benefits for those councillors as promulgated in the Public Officers Bearers Act.

7.5.2 Any remuneration paid or given in cash or in kind to person as a councillor or as a member of a political structure of Lepelle-Nkumpi Local Municipality otherwise than in accordance with 7.6.1 including any bonuses, bursary, loan, advance or other benefits, must be classified as irregular expenditure

7.6 Irregular Staff Appointments

7.6.1 No person may be employed in Lepelle-Nkumpi Local Municipality unless the post to which he/she is appointed, is provided for in the Lepelle-Nkumpi Local Municipality's staff establishment of the municipality as approved by council.

7.6.2 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 or fruitless and wasteful expenditure that the municipality may incur as a result of such invalid decision

7.6.3 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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7. 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 been 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.

8.5.1 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 have not been able to avoid incurring the same expenditure)

8.5.2 in determining whether expenditure is fruitless and wasteful, officials and councillors must apply the requirement 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 a councillor) have incurred the particular expenditure under exactly the same condition and circumstances? and

(b) Is the expenditure being incurred at the right price, right quality, right time and right quantity?

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.

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9. REPORTING ON UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

9.1 Reporting of unauthorised, 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 Council;
- (b) The Municipal Manager and Speaker, must be reported to Mayor.
- (c) Directors or the Chief Financial Officer, of a municipality, 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 a committee of a council for investigation in terms of s32 of the MFMA and
- (e) Officials below Director level of the municipality must be reported to CFO unless in the professional opinion of the CFO or MM, the nature or the amount the prohibited expenditure warrants the case to be referred to a Committee of Council
- (f) Where officials or councillors are responsible or alleged to be responsible for causing the unauthorised, fruitless and wasteful expenditure, this should be dealt with in accordance with Financial Misconduct Board.

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

9.3 The Municipal Manager must promptly inform the Mayor, the MEC for local government in the province and Office of the Auditor General, in writing, of any unauthorised, irregular or fruitless and wasteful expenditure incurred by 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
 - To prevent a recurrence of such expenditure

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

- (a) The Finance Portfolio Committee on a monthly basis
- (b) Executive mayoral Committee on a quarterly basis
- (c) Council on a quarterly basis;
- (d) A committee of council at least on a quarterly basis; and
- (e) Audit Committee on a quarterly basis

9.5 In accounting for unauthorised, irregular or fruitless and wasteful expenditure, Municipal Manager or delegated official (as may be relevant) must ensure that:

- (a) All such expenditure is disclosed in the annual financial statements as required by the MFMA and Treasury Requirements; and
- (b) Details pertaining to unauthorised, irregular or fruitless and wasteful expenditure must be disclosed in the Municipality's Annual report.

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

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

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

10.2 These registers must be updated on a monthly basis.

11. INVESTIGATION OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

11.1 A committee of council must institute an investigation of all prohibited expenditure reported in terms of clause 9.1 (d) above, The CFO must seek 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, or obviously unfounded.

11.2 Once the nature of the expenditure is confirmed as unauthorised, irregular or 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 referring the case to the disciplinary board or such procedures as may be appropriate in terms of the Financial Misconduct Regulations as well criminal proceedings in some situations.

11.3. The investigation shall be carried out in line with the approved Investigation Policy and procedures of the Lepelle-Nkumpi Local Municipality.

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12. DISCIPLINARY AND CRIMINAL CHARGES FOR UIF&W

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

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

12.2.1 Financial misconduct in terms of section 171 of the MFMA: in the case of an official that deliberately or negligently:

- (i) contravened a provision of the MFMA which resulted in prohibited expenditure; or
- (ii) made, permitted or authorised an irregular expenditure (due to non-compliance with any of legislation mentioned in the definition of irregular expenditure);

12.2.2. Breach of the Code of Conduct for Municipal Staff Members: in the case of an official whose actions in making, permitting or authorising prohibited expenditure constitute a breach of the Code; and

12.2.3. Breach of the Code of Conduct for Councillors: in the case of a Councillor, whose actions in making, permitting or authorising an irregular expenditure constitute 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 Council improperly interfered in the management or administration of the municipality.

12.3 the committee of council, Mayor or municipal manager or delegated officials (as may be relevant) must promptly report to the SAPS all cases of alleged:

12.3.1 Irregular expenditure that constitute a criminal offence; and

12.3.2 Theft and fraud that occurred in the municipality

12.4 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:

12.4.1 The charge is against the MM; or

12.4.2 The MM fails to comply with the above paragraph.

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13 RECOVERY OF UIF&W

- 13.1. The MM or delegated person must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure:
- 13.1.1. in the case of unauthorised expenditure, is
- (i) authorised in an adjustment budget or Special Adjustment budget; or
 - (ii) certified by the municipal council, after investigation by a committee of council, as irrecoverable and is written off by council; an
- 13.1.2. in the case of irregular or fruitless and wasteful expenditure, is after investigation by a committee of council, certified by council as irrecoverable and written off by council.
- 13.1.3. Irregular expenditure resulting from breaches of the Public Office-Bearers Act must be recovered from councillor to whom it was paid.
- 13.2. 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 come-up with payment term.
- 13.3. Without limiting liability in terms of the common law or other legislation, the MM must recover any such expenditure, in full, from official or councillor where:
- 13.3.1. In the 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 Lepelle-Nkumpi Local Municipality to incur the expenditure; and
- 13.3.2. In the case of the official, the official deliberately or negligently incurred such expenditure.
- 13.4. The fact that the council may have approved the expenditure for writing off or deemed it to be irrecoverable is no excuse in:
- 13.4.1. 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
- 13.4.2. Recovery of such expenditure from such person.
- 13.5. If the official or councillor fails to make satisfactory payment arrangement or fails to honour payment arrangement made, the amount owed for prohibited expenditure must be recovered through the normal debt collection process of the municipality.

14. CONSEQUENCES OF NON -COMPLIANCE

- 14.1. Any official or councillor who does not comply with their reporting duties in terms of this policy could be found guilty of Financial Misconduct.
- 14.2. Any councillor or official of Lepelle-Nkumpi Local Municipality will be committing an act of financial misconduct if that councillor or official deliberately or negligently

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makes or permits, or instruct another official of Lepelle-Nkumpi Local Municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure.

- 14.3. The action(s) to be taken shall be in line with the approved Consequence Management policy of the Lepelle-Nkumpi Local Municipality.

15. PROTECTION OF OFFICIALS OR COUNCILORS WHO HAVE REPORTED UIF&W

- 15.1. 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.
- 15.2. The MM or Mayor must immediately take appropriate action to ensure that protection of the official or councillor after receiving the above report.
- 15.3. 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. EFFECTIVE DATE

This policy will be effective upon adoption by council.

17. REVIEW OF POLICY

This policy must be reviewed and updated:

- a) Annually in line with the budget cycle and submitted with the budget policies; or
- b) Sooner if new legislation, regulation or circulars are issued that will cancel this policy.

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Council Approval

Date	17 MAY 2024
Resolution Number	6-1.05/2023/2024
Signature	