LEKWA LOCAL MUNICIPALITY
BUDGET RELATED POLICY

DRAFT UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY 2026/2027

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1. Purpose of the Policy

A policy for unauthorised, irregular, fruitless and wasteful expenditure must be compiled and adopted by municipalities to ensure compliance with Section 32 of the MFMA, Act 56 of 2003 and MFMA Circular 68 dealing with unauthorised, irregular, fruitless and wasteful expenditure issued by National Treasury on 10 May 2013.

The objectives of this policy are:

(a) To state the regulatory and legislative requirements surrounding fruitless, wasteful and irregular expenditure.
(b) To provide definitions of fruitless, wasteful and irregular expenditure.
(c) To provide examples of fruitless, wasteful and irregular expenditure.
(d) To outline procedures to manage such expenditures.
(e) To inform officials of the consequences of not complying with the relevant regulatory and legislative requirements.

2. Definitions

General Definitions:

“municipality” means Lekwa Local Municipality (LLM)“the Act” means the Municipal Finance Management Act, 2003 (Act No. 56 of 2003)

“the POBA” means the Public Office-Bearers Act, 1998 (Act No. 20 of 1998)

“official” means any person employed by the Lekwa Local Municipality, be it in the capacity as a permanent official, temporary official, intern or contracted employee (in terms of Section 57 of the Municipal Systems Act, Act 32 of 2000 or any other form of employment contract)

“department” means any internal department of the Lekwa Local Municipality as per the latest approved Organisational Structure of Council.

‘‘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 In relation to expenditure under section 26, means causing expenditure under that section to exceed the limits allowed in subsection (5) of that section

‘‘Vote’’ means –

(a) One of the main segments into which a budget of a municipality is divided for the appropriation of money for the different department or functional areas of the municipality; and
(b) which specifies the total amount that is appropriated for the purposes of the department or functional area concerned.

The MFMA defines unauthorised, irregular, fruitless and wasteful expenditure as follows:

"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 this Act, and which has not been condoned in terms of section 170;
(b) expenditure incurred by a Municipality or municipal entity or 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 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";

"unauthorised expenditure", in relation to a municipality, 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;
(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 Act;

"fruitless and wasteful expenditure" means expenditure that was made in vain and would have been avoided had reasonable care been exercised.

“Unforeseen and unavoidable expenditure” means expenditure that -

(a) Could not have been foreseen at the time the annual budget of the municipality was passed
(b) The delay that will be caused by a pending adjustments budget 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.

3. Legal Framework

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

(a) Section 32 of the MFMA reads as follows:

(1) Without limiting liability in terms of the common law or other legislation —

(a) a political office-bearer of a municipality is liable for unauthorised expenditure if that office-bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;
(b) the accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);
(c) any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure; or
(d) any political office-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.

(2) A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure —
(a) in the case of unauthorised expenditure, is —
    (i) authorised in an adjustments budget; or
    (ii) certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and
(b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

(3) If the accounting officer becomes aware that the council, the mayor or the executive committee of the municipality, as the case may be, has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, the accounting officer is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the accounting officer has informed the council, the mayor or the executive committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure."

(b) Section 176 of the MFMA which reads as follows:

(1) No municipality or any of its political structures, political office-bearers or officials, no municipal entity or its board of directors or any of its directors or officials, and no other organ of state or person exercising a power or performing a function in terms of this Act, is liable in respect of any loss or damage resulting from the exercise of that power or the performance of that function in good faith.

(2) Without limiting liability in terms of the common law or other legislation, a municipality may recover from a political office-bearer or official of the municipality, and a municipal entity may recover from a director or official of the entity, any loss or damage suffered by it because of the deliberate or negligent unlawful actions of that political office-bearer or official when performing a function of office.

a) Section 170 and 173 of the MFMA
b) Regulation 23 and 74 of the Municipal Budget and Reporting Regulations
c) Relevant GRAP statements

4. Role of the Accounting Officer

The Accounting Officer is responsible, amongst others, for the following:

(a) Exercise all reasonable care to prevent and detect irregular, unauthorised, fruitless and wasteful expenditure and must for this purpose implement effective, efficient and transparent processes of financial and risk management;
(b) Inform the Executive Mayor, Mayoral Committee and Council (in writing), as the case may be, if a decision is taken which, if implemented, is likely to result in irregular, unauthorised, fruitless and wasteful expenditure;
(c) On discovery of any irregular, unauthorised, fruitless and wasteful expenditure to report promptly (in writing), the particulars of the expenditure to the Executive Mayor;
(d) Follow the prescribed processes to deal with irregular, unauthorised, fruitless, and wasteful expenditure.

5. Procedure for Unforeseen and Unavoidable Expenditure

The Municipality hereby adopts the MFMA Budget and Reporting Regulations' prescribed processes to be followed for the approval of unforeseeable and unavoidable expenditure as set out below:

a) No unavoidable expenditure exceeding R15 million may be approved during a financial year.
b) Any official/department becoming aware of the need to incur unforeseen or unavoidable expenditure must immediately approach the Chief Financial Officer with the full details on the unforeseen 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). A confirmation that the expenditure does not constitute expenditure that may not be allowed by the Executive Mayor as per section 73(2) of the MFMA Budget and Reporting Regulations must be given by the department when approaching the CFO.

c) The Chief Financial Officer will determine whether the cost cannot be dealt with through a process of shifting of funds within the relevant votes in terms of the virements policy. If sufficient funds are available, the virements process will be followed. If not, the matter will be reported to the Municipal Manager for consideration as unforeseen and unavoidable expenditure.
d) Once the Municipal Manager has granted approval, the relevant Executive Director will be authorised to submit a report to the Executive Mayor requesting approval. If approval is granted, the Munsoft financial system will be adjusted to allow the department to process the financial transaction.
e) The abovementioned process will be dealt with as highest priority to ensure that administrative delays do not exacerbate the situation.
f) An adjustments budget will be submitted to the next Council meeting. The preferred process would be to shift funds between votes to avoid any negative impact on the total cash position of council.

6. Examples of Unauthorised, Irregular or Fruitless and Wasteful Expenditure

The following examples are only guides and are not exhaustive.

6.1 Fruitless and wasteful expenditure

- Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised.
- Fruitless and wasteful expenditure is accounted for as expenditure in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

Fruitless and wasteful expenditure in LLM includes the following:

- Procuring of goods and services that are not beneficial to the municipality
- Costs of goods and services are in excess of what would have been the case have proper procedures been followed (quotes etc.)
- Renting of property when sufficient and appropriate unoccupied property is owned by the municipality
- Exuberant costs on parties, entertainment etc.
- Incurring penalty and interest costs on late payment of accounts
- Mismanagement of funds.

6.2 Irregular expenditure

Irregular expenditure in LLM 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. Irregular expenditure excludes unauthorised expenditure. Irregular expenditure is accounted for as expenditure in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

Irregular expenditure in LLM includes the following:

- Irregular expenditure incurred as a result of institutions procuring goods or services by means other than through competitive bids and where reasons for deviating from inviting competitive bids have not been recorded and approved by the accounting officer;
- Irregular expenditure incurred as a result of non-compliance with a requirement of the municipality's delegations of authority;
- Irregular expenditure incurred due to it being in contravention of the entity's supply chain management policy;
- Expenditure paid out to service providers who are in the service of state;
- Irregular expenditure incurred as a result of non-compliance with a provision contained in any applicable legislation.

6.3 Unauthorised expenditure

Unauthorised expenditure in LLM is 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, entity or organ of state and expenditure in the form of a grant that is not permitted in terms of the Municipal Finance Management Act (Act No.56 of 2003).
Unauthorised expenditure is accounted for as an expense in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

Unauthorised expenditure in LLM includes the following:

- Procuring of goods and services that are not budgeted for;
- Expenditure not in terms of the conditions of an allocation (grant etc) received from another sphere of government, entity or organ of state;
- Expenditure in the form of a grant that is not permitted in terms of the MFMA.

7. Process to be followed in cases of Unauthorised, Irregular or Fruitless and Wasteful Expenditure

a) Any unauthorised, irregular or fruitless and wasteful expenditure as defined above, must be promptly reported to the Chief Financial Officer who will initiate the process of dealing with the unauthorised, irregular or fruitless and wasteful expenditure.
b) A register will be maintained by the Manager Supply Chain to record all instances of unauthorised, irregular, fruitless and wasteful expenditure.

c) The format of the register will be consistent with Annexure A of MFMA Circular 68 issued on 10 May 2013.
d) Upon receiving a report of unauthorised, irregular or fruitless and wasteful expenditure, the CFO will advise, in writing, the Municipal Manager and the Head of Internal Audit.
e) The Manger Internal Audit will institute an investigation as contemplated in section 32 of the MFMA, and in particular, determine the following:

- Nature of the non-compliance (i.e. non-compliance with MFMA, MSA,
- Remuneration of Public Officer Bearer's Act, etc.);
- Nature and reason for the unauthorised expenditure, irregular or fruitless and wasteful expenditure ;
- Whether the unauthorised, irregular or fruitless and wasteful expenditure was as a result of an instruction given, and if so, by whom.

In addition, whether the accounting officer of official involved advised that such a decision would result in unauthorised, irregular or fruitless and wasteful expenditure:

- Whether the irregular expenditure result from a minor breach in the procurement policy;
- Whether the municipality suffered a financial loss;
- Whether the accounting officer / official / public officer bearer acted deliberately, negligently, or grossly negligently;
- Grounds shown as to why the unauthorised expenditure should be authorised (such as interest of the municipality);
- Whether the accounting officer can condone the non-compliance with the SCM policy as a minor breach;
- Whether the non-compliance must be submitted to the National Treasury for condonation;
- Whether the non-compliance must be submitted to the Minister of Cooperative Governance and Traditional Affairs for condonation.

f) The findings of the Manager Internal Audit will be submitted to the Municipal Manager for consideration of the following:
Introduction of an adjustments budget to authorise the un-authorised expenditure (if unforeseen and unavoidable and the process outlined in paragraph 3 of this policy could not be followed)
- Recommendation to recover funds
- Recommendation n to write the funds of as irrecoverable
- Disciplinary / Criminal action to be instituted.

g) The Manager Internal Audit must, in considering e above, take due cognisance of section 176 of the MFMA.

h) The Municipal Manager must advise the Executive Mayor (Manager Supply Chain to facilitate reporting process) of the unauthorised, irregular or fruitless and wasteful expenditure and the recommendations that will be made to the section 80 committee.

i) The Executive Director: Corporate Services will be responsible to institute criminal charges where applicable.

j) The findings of the of the Head Internal Audit and the recommendations of the Municipal Manager will be submitted to a joint sitting of the Finance and Corporate Services as well as the relevant departmental section 80 committee for consideration of the following:

- Introduction of an adjustments budget to authorise the un-authorised expenditure (if unforeseen and unavoidable and the process outlined in paragraph 3 of this policy could not be followed)
- Recommendation to recover funds
- Recommendation to write the funds of as irrecoverable

k) The recommendations of the section 80 committees will be submitted to the next Mayoral Committee and Council meetings for final decision.

l) Upon conclusion of the Council process, the Manager Internal Audit must promptly advise the MEC for Local Government and the Auditor General of the unauthorised, irregular or fruitless and wasteful expenditure and the decision taken by Council.

m) If the unauthorised expenditure is not authorised by Council, the funds must be recovered from the liable official or political officer bearer (within 30 days or in reasonable instalments).

n) The Register of unauthorised, irregular or fruitless and wasteful expenditure will form part of the Municipal Manager's management meeting agenda to ensure the reported items are dealt with in a prompt manner.

o) All instances of unauthorised, irregular, fruitless and wasteful expenditure must be disclosed in the annual report.

p) The Chief Financial Officer must initiate a special adjustments budget (if applicable) to deal with the authorisation of un-authorised expenditure.

8. Investigations and Disciplinary Actions

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

(a) will fully or negligently fails to take effective and appropriate steps to prevent unauthorised, irregular or fruitless and wasteful expenditure as required by the MFMA;
(b) fails to take effective and appropriate disciplinary steps against an official in the department who makes or permits unauthorised, irregular or fruitless and wasteful expenditure;
(c) fails to report unauthorised, irregular or fruitless and wasteful expenditure in terms of the MFMA.

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

8.3 In terms of section 172 of the MFMA, an official of a department to whom a duty or power has been assigned commits an act of financial misconduct if that official will fully or

negligently fails to perform that duty or exercise that power in line with applicable legislation.

8.4 ln 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.

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

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

9. Reporting

9.1 The Accounting Officer must comply with the following reporting requirements:

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

The report must include the following details:

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

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

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

10. Conclusion

Irregular expenditure resulting from non-compliance with the MFMA and the MSA can't be condoned by Council and approval must be sought from the National Treasury, the Minister of Co-operative Governance and Traditional Affairs respectively.
Irregular expenditure resulting from non-compliance with the Public Officer Bearer's Act can't be condoned and such irregular expenditure must be recovered from the political officer bearer concerned.

A council may condone irregular expenditure resulting from a contravention of the SCM policy provided that the contravention is not also a contravention of the MFMA or the SCM Regulations, in which case only the National Treasury can condone a contravention of the SCM Regulations.

Minor breaches of the procurement process can be ratified by the accounting officer (if the municipality's SCM policy allows for it). Only the breaches in the process can be ratified and not the irregular expenditure itself. The irregular expenditure must still be ratified by Council.

Any approval granted to write off debt owed to the municipality, shall be provided to the Chief Financial Officer on a monthly basis.