

# **UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL**

## **(Approved by Council on 29 May 2025)**

---

# **THEMBELIHLE**

**LOCAL MUNICIPALITY  
PLAASLIKE MUNISIPALITEIT  
U-MASIPALA WASEKUHALENI**



Council resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Unauthorised, Irregular, Fruitless and Wasteful Policy of the Thembelihle local municipality.

## TABLE OF CONTENTS

ABBREVIATIONS/ACRONYMS.....	3
1 INTRODUCTION.....	4
2 OBJECTIVE .....	4
3 DEFINITIONS .....	5
4 REGULATORY FRAMEWORK .....	7
5 APPLICATION OF THIS POLICY .....	7
6 UNAUTHORISED EXPENDITURE .....	8
7 IRREGULAR EXPENDITURE .....	10
8 CONDONEMENT OF IRREGULAR EXPENDITURE.....	11
9 FRUITLESS AND WASTEFUL EXPENDITURE.....	11
10 PROCESSES TO FOLLOW WHEN DEALING WITH UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE....	12
11 REPORTING ON UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE.....	14
12 MAINTAINING OF REGISTER FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE.....	15
13 INVESTIGATION AND REGULARIZING OF UNAUTHORIZED AND IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE.....	15
14 RECOVERY UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE.....	17
15 CONSEQUENCES OF NON-COMPLIANCE.....	18
16 PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UNAUTHORIZED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE .....	18
16 EFFECTIVE DATE .....	19
17 REVIEW OF POLICY.....	19
18 APPROVAL.....	19

## **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 Manager
MIG	-	Municipal Infrastructure Grant
Municipality	-	Thembelihle Local Municipality
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. Act 32 of 2000
Structures Act	-	Municipal Structures Act, 1998, Act No 117 of 1998
RPOBA	-	Remuneration of Public Office Bearers Act
Policy	-	Policy on unauthorised, irregular, fruitless and wasteful expenditure
UIF&W		Unauthorised, Irregular, Fruitless and Wasteful Expenditure
MBRR	-	Municipality 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 Thembelihle 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 Thembelihle Municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA.
- 1.2. In terms of section 4(2)(a) of the Municipal Systems Act (MSA) the council has a duty to use the resources of the municipality in the best interest of the local community. This duty is extended to individual councillors through the Code of Conduct for Councillors, which states that a councillor must:
  - i. “perform the functions of office in good faith, honestly and in a transparent manner, and
  - ii. at all times act in the best interests of the community and in such a way that the credibility and integrity of the municipality are not compromised.”
- 1.3. This is to ensure the effective, efficient and transparent systems of financial, risk management and internal control.

## **2 OBJECTIVE**

- 2.1. This document sets out Thembelihle 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, or 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) Thembelihle 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 DEFINITIONS

Except if otherwise indicated:

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

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

**“Councillor”** means member of municipal council of Thembelihle.

**“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 sections 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 Thembelihle 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; or
- e) excludes expenditure by a municipality which falls within the definition of

unauthorised expenditure.

**“Official”**, in relation to , means:

- a) an employee of Thembelihle ;
- b) a person seconded to Thembelihle or to work as a member of the staff of the Thembelihle; or
- c) a person contracted by Thembelihle to work as a member of the staff of the Thembelihle 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 allowed 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 Thembelihle refers to Executive Managers including the 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;
- 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 Thembelihle otherwise than in accordance with the MFMA.

**Vote**<sup>1</sup> 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.

## **4 REGULATORY FRAMEWORK**

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

- 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) The Remuneration of Public Office Bearers Act;
- d) Municipal Systems Act, 2000, Act No 32 of 2000;
- e) Municipal Regulations on Financial Misconduct procedures and criminal proceedings;
- f) Revised MFMA Circular 68;
- g) Relevant GRAP Standards;
- h) Municipal Structures Act No. 117 of 1998;
- i) Public Audit Amendment Act 5 of 2018 Section 5A and 5B;
- j) NCPT Instruction Note 1 of 2017/18;
- k) Municipal Budget and Reporting Regulations and
- l) Any other legislation, regulation or circular that may affect this policy.

## **5 APPLICATION OF THIS POLICY**

5.1.1. This policy applies to all officials and councillors of Thembelihle.

5.1.2. This policy should be read in conjunction with the following of Thembelihle:

- a) Delegations of Authority;
- b) Procedures for unauthorised, irregular, fruitless and wasteful expenditure;
- c) Policy on financial misconduct – MFMA Circular 68;
- d) Municipal Regulations on Financial Misconduct procedures and criminal proceedings;
- e) Breach of the Code of Conduct for Municipal Staff Members;
- f) Breach of the Code of Conduct for Councillors;
- g) Supply Chain Management policy; and
- h) Debt Collection & Credit policy.

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

## **6 UNAUTHORISED EXPENDITURE**

### **6.1. Unauthorised expenditure would include:**

- a) Any overspending in relation to both the operational budget and capital budget of the municipality;
- b) Overspending in relation to each of the votes on both the operational budget and capital budget;
- c) Use funds allocated to one department for purposes of another department or for purposes 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) Any grant to an individual or household unless it is in terms of the municipality's indigent policy, bursary scheme, corporate social responsibility policy, councillors discretionary grant or the grants-in-aid ;
- g) Unforeseen and unavoidable expenditure not authorised within an adjustments budget within 60 days after the expenditure was incurred;
- h) Any overspending on non-cash items, for example depreciation, impairments, provisions;
- i) Any amount authorised by the mayor in excess of the monetary limits set in regulation 72 of the MBRR; and
- j) Unforeseen and unavoidable expenditure incurred where the reason for the mayor authorising such unforeseen and unavoidable expenditure does not fall within the ambit of regulation 71(1) and 71(2) of the MBRR.

### **6.2. Unauthorised expenditure does not include:**

- a) Expenditure incurred in terms of an approved budget or adjustments budget and within the limits of the amounts appropriated for the different votes in an approved budget or adjustments budget
- b) Expenditure incurred within the ambit of Thembelihle's virement policy.
- c) Expenditure that is NOT classified as unauthorized expenditure

### **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.**



#### 6.4. Expenditures that are NOT classified as unauthorized expenditure

- a) 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 of the transactions mentioned in section 11(1)(a) to (j) of the MFMA;
  - iii. re-allocation of funds and the use of such funds in accordance with a council 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 a 'vote' on the main budget Table A5.

#### 6.5. 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 Thembelihle on behalf of that person or organ of state, including—
  - (i) money collected by the Thembelihle on behalf of that person or organ of state by agreement; or
  - (ii) any insurance or other payments received by the Thembelihle 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*].
- j) Any expenditure approved in terms the Municipal Budget and Reporting Regulations (MBRR).

## **7 IRREGULAR EXPENDITURE**

- 7.1. Irregular expenditure is expenditure incurred by a municipality that is contrary to the Municipal Finance Management Act (Act No.56 of 2003) and has not been condoned in terms of Section 170 of the Act, or is in contravention of Thembelihle Municipality' Supply Chain Management (SCM) policy and any by-laws giving effect to the SCM policy;
- 7.2. In this context "expenditure" refers to any use of municipal funds that is in contravention of the following legislation:
  - i. Municipal Finance Management Act (Act No.56 of 2003)
  - ii. Municipal Systems Act (Act No.32 of 2000),
  - iii. Public Office Bearers Act (Act No. 20 of 1998)
  - iv. Thembelihle Municipality' Supply Chain Management (SCM) policy and any by-laws giving effect to this policy
- 7.3. Irregular expenditure is actually expenditure that is in violation of some or other procedural/legislative requirement of the acts specified in 6.2 above;
- 7.4. Irregular expenditure excludes unauthorised expenditure;
- 7.5. Although a transaction or an event may trigger irregular expenditure, a Municipality will only identify irregular expenditure when a payment is made. The recognition of irregular expenditure must be linked to a financial transaction;
- 7.6. 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.
- 7.7. Officials and councillors must ensure that all instances of irregular expenditure are prevented, detected and reported in a timely manner.

## **8 CONDONEMENT OF IRREGULAR EXPENDITURE**

- 8.1. In terms of Section 32(2)(b) of the MFMA, irregular expenditure may only be written-off by Council if, after an investigation by an council committee, the irregular expenditure is certified as irrecoverable. In other words writing-off is not a primary response, it is subordinate to the recovery processes, and may only take place if the irregular expenditure is certified by Council as irrecoverable, based on the findings of an investigation,
- 8.2. In terms of Section 170 of the MFMA, only the National Treasury may condone non-compliance with a regulation issued in terms of the MFMA or a condition imposed by the Act itself.
- 8.3. The Municipal Council therefore has no power in terms of the MFMA to condone any act of non-compliance in terms of the MFMA or any of its regulations,
- 8.4. There is no provision in the MSA that allows for a contravention of the Act to be condoned.
- 8.5. There is no provision in the Public Office Bearers Act that allows for a contravention of the Act to be condoned. Such expenditure incurred in noncompliance with any provision of the POBA cannot be written off and must be recovered from the political Office Bearer concerned.
- 8.6. A Council may condone a contravention of the Council approved SCM Policy or a by-law giving effect to such policy, provided that the contravention, is not also a contravention of the MFMA or the SCM regulations.

## **9 FRUITLESS AND WASTEFUL EXPENDITURE**

- 9.1. The Municipal Council, the Mayor and the Accounting Office have a fiduciary responsibility to ensure that the municipal resources are used in the best interests of the municipality and the local community.
- 9.2. 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”.
- 9.3. Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised.

- 9.4. Expenditure incurred that has been budgeted for (authorised) and was not regarded as irregular expenditure could be classified as fruitless and wasteful expenditure.
- 9.5. 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).
- 9.6. 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 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 quality, right time and right quantity?
- 9.7. 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.

## **10 PROCESS TO BE FOLLOWED WHEN DEALING WITH UNAUTHORISED EXPENDITURE, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**

- 10.1. If any official or councillor of the Municipality is certain or has reason to believe that an expense that has been incurred by the Municipality is either fruitless and wasteful, irregular or unauthorised, such official or councillor should within 5 working days report such expenditure to the MM or CFO and provide reasons or any relevant details thereof.
- 10.2. The MM and CFO should consider whether the expenditure reported to

him/her in term of sub paragraph 10.1 and any other expenditure that they become aware of which qualifies as either fruitless and wasteful, irregular or unauthorised expenditure and perform any investigations necessary to arrive at a decision on classification of the expenditure. They should then within 5 working days after the end of each month prepare and submit preliminary or complete report on all expenditure reported to them in terms of this Policy regardless of having either qualified or disqualified the expenditure from either being fruitless and wasteful, irregular or unauthorised.

- 10.3. The CFO should compile a comprehensive report of all expenditure reported by the various departments for the quarter and include any fruitless and wasteful, irregular and unauthorised expenditure of Finance Department and should also provide his/her comments on the correctness of the classification of the expenditure by the Departments and submit a full report to the Municipal Manager within 5 working days after the end of each month.
- 10.4. The Council must forward a report on all alleged fruitless and wasteful, irregular and unauthorised expenditure to investigate and recommendations to MPAC (Municipal Public Accounts Committee) within 5 working days after receipt of the report from the MM or CFO unless those allegations are frivolous, vexatious, speculative or obviously unfounded. The report should also include details of any action taken by the MM with respect to the alleged fruitless and wasteful, irregular and unauthorised expenditure.
- 10.5. If the MM becomes aware that Council, the Mayor or the Mayoral 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 MM is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the MM has informed Council, the Mayor or the Mayoral Committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure.
- 10.6. Any official or Councillor who becomes aware or has reason to believe that either the MM, CFO, other officials or Councillor of the Municipality has deliberately or negligently makes, permits, instructed another official of the Municipality to incur fruitless and wasteful, unauthorized and irregular expenditure and may have further provided incorrect or misleading information or withholds information which is to be submitted in terms of the MFMA or this Policy must report their suspicions directly to MPAC.
- 10.7. MPAC must investigate recoverability of all allegations of fruitless and

wasteful, irregular and unauthorised expenditure contained in the MM's Report or reported to MPAC per clause 10.6 above promptly and make recommendations to Council.

10.8. MPAC as part of their recommendations may refer to disciplinary boards all allegations of financial misconduct reported to it against the MM, the CFO, Senior Managers or other officials of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded.

## **11 REPORTING ON UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**

11.1. 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 or the chief financial officer, or the chief operating 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 MPAC for investigation in terms of s32 of the MFMA 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 or the amount of the prohibited expenditure warrants the case to be referred to MPAC.
- f) Where officials or councillors are responsible or alleged to be responsible for causing the unauthorised, irregular fruitless and wasteful expenditure, this should be dealt with in accordance with Financial Misconduct Regulations.

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

11.3. 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 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; and
  - To prevent a recurrence of such expenditure.

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

- a) The Finance Portfolio Committee on a monthly basis;
- b) Mayoral Committee on a monthly basis;
- c) Disciplinary boards as per 10.8
- d) Council on a quarterly basis;
- e) MPAC at least on a quarterly basis ;
- f) Audit Committee on a quarterly basis; and
- g) Provincial Treasury.

11.5. In accounting for unauthorised, irregular, fruitless and wasteful expenditure, municipal manager or delegated officials (as may be relevant) must ensure that:

- a) All confirmed unauthorised, irregular, fruitless and wasteful expenditure must be recorded in separate account, in the accounting system of Thembelihle, created for each of the above types of expenditure;
- b) All such expenditure is disclosed in the annual financial statements as required by the MFMA and treasury requirements and as per annexure D of the revised MFMA circular 68; and
- c) Details pertaining to unauthorised, irregular, fruitless and wasteful expenditure must be disclosed in the Municipality's Annual Report.

## **12 MAINTAINING OF REGISTER FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**

12.1. The AO and/or CFO must maintain a register of all confirmed incidents of unauthorised, irregular, fruitless and wasteful expenditure:

12.2. These registers must be updated on a monthly basis as per NCPT Instruction note 1 of 2017/18.

## **13 INVESTIGATION OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**

13.1. MPAC must institute an investigation of all prohibited expenditure reported in terms of clause 10.4 above.

13.2. The municipality through office of MM must either refer the matter to the Thembelihle municipality's Internal Audit Department, or an appropriate investigative body for preliminary investigation, to determine:

- a) Whether the expenditure is in fact unauthorised, irregular, fruitless and wasteful?

- b) Whether grounds exist for a charge of financial misconduct to be laid against the official liable or political office bearer for the expenditure?
- 13.3. Once the nature of the expenditure is confirmed as unauthorised, irregular, fruitless and wasteful expenditure, Thembelihle Municipality must table the report in council and referred to MPAC to investigate recoverability.
- 13.4. If, after having followed a proper investigation, the Council concludes that the political office bearer or official responsible for making, permitting or authorising unauthorised, irregular, fruitless and wasteful expenditure did not act in good faith, then the municipality must consider instituting disciplinary action and/or criminal charges against the liable person/s.
- 13.5. If the unauthorized, irregular, fruitless and wasteful expenditure falls within the ambit of the above description, then the Council, Mayor or Municipal Manager (as may be relevant) must institute disciplinary action as follows:
- a) 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 irregular expenditure; or
    - ii. made, permitted or authorised an irregular expenditure (due to noncompliance with any of legislation mentioned in the definition of irregular expenditure);
  - b) Breach of the Code of Conduct for Municipal Staff Members: in the case of an official whose actions in making, permitting or authorizing an irregular expenditure constitute a breach of the Code; and
  - c) Breach of the Code of Conduct for Councillors: in the case of a political office- bearer, whose actions in making, permitting or authorizing an irregular expenditure constitute a breach of the Code This would also include instances where a Councillor knowingly voted in favour or agreed with a resolution before Council that contravened legislation resulting in irregular expenditure when implemented, or where the Councillor improperly interfered in the management or administration of the municipality.
- 13.6. The Council, Mayor or Municipal Manager or delegated officials (as may be relevant) must promptly report to the SAPS all cases of alleged:
- a) Irregular expenditure that constitute a criminal offence; and
  - b) Theft and fraud that occurred in the municipality.
- 13.7. 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:

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

## **14 RECOVERY OF UIF&W**

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

- a) in the case of unauthorised expenditure, is
- b) authorised in an adjustment budget; OR
- c) certified by the municipal council, after investigation by MPAC, as irrecoverable and is written off by council; and
- d) 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.

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

14.3. 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 in line with municipality's debt collection policy.

14.4. 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:

- a) 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 Thembelihle to incur the expenditure; and
- b) In case of the official, the official deliberately or negligently incurred such expenditure.

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

- a) 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.

14.6. 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.

- 14.7. Municipality must take note of the Public Audit Amendment Act, Act 5 of 2018, and regulations issued, which amongst others, provides for the Auditor-General to issue a certificate of debt where an accounting officer or accounting authority has failed to recover losses from a responsible person and to instruct the relevant executive authority to collect the debt.

## **15 CONSEQUENCES OF NON-COMPLIANCE**

- 15.1. Any official or councillor who does not comply with their reporting duties in terms of this policy could be found guilty of financial offence.
- 15.2. Any councillor or official of Thembelihle will be committing an act of financial offence if that councillor or official deliberately or negligently makes or permits, or instructs another official of Thembelihle to make, an unauthorised, irregular or fruitless and wasteful expenditure.

## **16 PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UIF&W**

- 16.1. 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.
- 16.2. The MM or Mayor must immediately take appropriate action to ensure that protection of the official or councillor after receiving the above report.
- 16.3. 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.

## 17 EFFECTIVE DATE

This policy will be effective upon adoption by Council.

## 18 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 impact this policy.

## 19 APPROVAL

The signatories hereof, being duly authorised thereto, by their signatures hereto authorise the execution of the work detailed herein, or confirm their acceptance of the contents hereof and authorise the implementation/adoption thereof, as the case may be, for and on behalf of the parties represented by them.

### VERSION CONTROL

Version 1

Date

Summary: This document describes the Unauthorised, Irregular, Fruitless and Wasteful Policy that will be applicable to Thembelihle Municipality starting 1 July 2023 and will be revised annually. For further information on the policy the Chief Financial officer can be contacted at 053 20 30 005/8

Approval

SIGNATURE ACCOUNTING OFFICER:.....

DATE:.....

SIGNATURE: (MAYOR).....

DATE:.....

COUNCIL RESOLUTION NUMBER:.....

DATE:.....