

Unauthorised, Irregular, Fruitless and Wasteful Expenditure ('UIFWE') Policy of NAMAKWA DISTRICT MUNICIPALITY

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1. Purpose, legal effect and statutory context of the Policy

- 1.1. The purpose of this Policy is to establish a comprehensive governance framework to support the prevention, identification, classification, recording, reporting, investigation, determination, recovery, write-off, disclosure, and oversight of unauthorised, irregular, fruitless, and wasteful expenditure ('UIFWE') incurred by the municipality.
- 1.2. This Policy constitutes an internal governance instrument adopted in terms of the municipality's obligations under the Municipal Finance Management Act 56 of 2003 (MFMA) and must be applied by all officials and political office bearers in the performance of their functions.
- 1.3. Any failure to comply with this Policy must be regarded as a breach of financial governance duties and may constitute financial misconduct or misconduct in terms of applicable legislation.
- 1.4. This Policy must be interpreted in a manner consistent with the MFMA, the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, the Municipal Supply Chain Management Regulations, the Municipal Budget and Reporting Regulations, 2008 and National Treasury guidance.
- 1.5. UIFWE classification is based on the objective characteristics of a transaction and does not depend on retrospective approval, value received, or perceived service delivery benefit.
- 1.6. Recording UIFWE is mandatory once the statutory criteria are met and must not be deferred pending investigation, Council consideration or legal advice.
- 1.7. The duty to record UIFWE exists independently of the duty to determine liability, recoverability or misconduct.

2. Application and binding effect of the Policy

- 2.1. This Policy applies to:
 - 2.1.1. All municipal councillors;
 - 2.1.2. the Accounting Officer;
 - 2.1.3. all senior managers;
 - 2.1.4. all municipal officials;
 - 2.1.5. any person seconded to the municipality to work as a staff member of the municipality;
 - 2.1.6. a person contracted to the municipality to work as a staff member of the municipality, other than as an employee of the municipality;
 - 2.1.7. all former municipal officials;

- 2.1.8. all former municipal councillors; and
- 2.1.9. all municipal governance and oversight structures.
- 2.2. The Policy applies to all municipal expenditure, irrespective of funding source, including grants, borrowings, own revenue, and third-party-administered funds.
- 2.3. The Policy applies to UIFWE identified in the current, future, or any previous financial year, regardless of when the UIFWE was incurred.

3. Definitions

- 3.1. In this Policy, a word or expression to which a meaning has been assigned in the MFMA and regulations issued in terms of the MFMA, referred to herein, has the same meaning as in the MFMA, unless the context indicates otherwise.

4. UIFWE management process

Identification and reporting of UIFWE

- 4.1. The municipality must ensure that its system of internal controls, financial reporting, supply chain management monitoring, contract management, human resource management, expenditure management, and audit processes are capable of detecting potential UIFWE at the earliest possible stage of the transaction cycle. UIFWE must be identified at the earliest possible stage, once expenditure is incurred or information becomes available indicating that the expenditure may fall within the MFMA's statutory definitions.
- 4.2. UIFWE may be identified through management controls, compliance reviews, internal audit work, SCM monitoring, contract performance reviews, Auditor-General findings, forensic investigations, whistle-blowing reports, or any other source of information, including external sources.
- 4.3. All municipal officials and councillors have a duty to report suspected UIFWE immediately upon becoming aware of circumstances indicating that expenditure may fall within the statutory definitions. The duty to identify UIFWE applies to all officials involved in financial management, supply chain management, contract administration, project management and budget execution, and such officials must not defer identification on the basis that further information is required or that the expenditure may later be justified.
- 4.4. Failure by any official to report suspected UIFWE immediately, or within five (5) working days by the latest, upon becoming aware of it, may constitute a breach of the duty of care to the municipality and may give rise to disciplinary or financial misconduct proceedings.

Recording of UIFWE

- 4.5. UIFWE must be recorded in the municipality's financial records, and the UIFWE register must be updated immediately upon meeting the criteria for classification. Recording of UIFWE must not be delayed pending investigation, legal advice, Council consideration, internal consultation or the availability of complete documentation. The recording requirement is separate from the process of determining liability, recoverability or misconduct.
- 4.6. Any attempt to delay the recording of UIFWE to avoid disclosure must be regarded as a breach of this Policy and will constitute financial misconduct or normal misconduct, depending on the circumstances.
- 4.7. The Chief Financial Officer or delegated officials must ensure that all UIFWE is recorded immediately, in the UIFWE register, upon identification, regardless of whether investigations, recovery actions, or disciplinary proceedings are still pending. The recording must include the full financial amount, the date of occurrence, the department involved, the nature of the breach, and the available supporting documentation.
- 4.8. Each UIFWE case must be allocated a unique reference number and must be traceable to the accounting records and financial statements. Recording must be supported by sufficient documentation to allow audit verification, MPAC and Council oversight.

UIFWE incidence report

- 4.9. The Accounting Officer must ensure that systems exist within the municipality requiring departments to compile UIFWE incident reports in a consistent format and within prescribed timeframes. The Accounting Officer must ensure that such reports are retained as official records of the municipality and made available to internal audit, MPAC, Council, and external oversight bodies, where required.
- 4.10. Once UIFWE has been identified or reasonably suspected, the responsible department's head or director, and the alleged responsible officials must compile a formal UIFWE incident report to ensure that the expenditure is properly recorded, assessed, and processed in accordance with the MFMA. The UIFWE incident report serves as the primary administrative record of the occurrence and must contain sufficient factual and financial information to enable the Accounting Officer, MPAC and Council to exercise their statutory functions.
- 4.11. The department in which the UIFWE occurred, together with the responsible head or director, must compile the initial UIFWE incident report within a reasonable period after the expenditure is identified, which should not be later than ten (10) working days after the UIFWE has been reported.
- 4.12. The UIFWE incidence report should include the reports of persons allegedly responsible for the UIFWE incurred.

- 4.13. The duty to compile the report rests with the operational department that authorised, incurred, or administered the expenditure, and may not be transferred to the finance unit, internal audit, or any other structure unless formally directed by the Accounting Officer or, where appropriate, the Mayor.
- 4.14. Failure by a department or responsible official to compile the UIFWE incident report timeously constitutes a breach of duty of care to the municipality and may give rise to disciplinary proceedings.
- 4.15. The UIFWE incidence report should include content that facilitates the MPAC UIFWE recovery investigation and that considers the requirements of the MFMA. The UIFWE incident report must be submitted to the Accounting Officer and the Chief Financial Officer /delegated officials for verification and recording in the UIFWE register.
- 4.16. The Accounting Officer must review the report to ensure that it contains sufficient information to support financial recording and must request additional information where necessary. Where the report is incomplete, the originating department must provide the outstanding information within the timeframe specified by the Accounting Officer, which must be within five (5) working days of the Accounting Officer's request to do so.
- 4.17. Persistent failure to provide required information must be reported to the Accounting Officer and may be referred for disciplinary consideration. Failure to compile or submit a UIFWE incident report, submission of materially inaccurate information, or deliberate omission of relevant facts may constitute misconduct or financial misconduct. Where such conduct is suspected, the Accounting Officer must consider whether disciplinary or financial misconduct proceedings are required.
- 4.18. All UIFWE information should be safeguarded in terms of policies and controls of the municipality.

Statutory reporting in terms of section 32 of the MFMA

- 4.19. The Accounting Officer must report all UIFWE to the Mayor, the relevant MEC for local government, and the Auditor-General within a reasonable period after detection, which should be, at the latest, one calendar month following the UIFWE's incurrence or payment being identified.
- 4.20. Such reporting must include a description of the expenditure, the amount involved, the known facts at the time of reporting and the steps being taken to investigate the matter.

Referral of financial misconduct allegations or normal misconduct allegations

- 4.21. Where UIFWE gives rise to a reasonable suspicion that a municipal official or Accounting Officer may have acted deliberately or negligently in breach of the MFMA, the written council approved MFMA system of delegations or any applicable financial management prescript, the municipality must consider whether such conduct constitutes financial misconduct as contemplated in Chapter 15 of the MFMA read with the Municipal Regulations on Financial

Misconduct Procedures and Criminal Proceedings.

- 4.22. Referral of a UIFWE matter for possible financial misconduct processing does not depend on MPAC and/or Council having determined the UIFWE, and financial misconduct processes may proceed in parallel with MPAC and/or Council consideration, where appropriate.
- 4.23. Both the MPAC and Council can refer UIFWE incurred to the municipality's disciplinary board for financial misconduct investigation, if the matter has not been referred to the disciplinary board, and the UIFWE incurred triggers non-compliance with section 171 of the MFMA.
- 4.24. Where the UIFWE is incurred, but does not lead to an allegation of financial misconduct, which may be due to lack of delegations, where applicable, the processes for normal misconduct for officials should be followed.
- 4.25. Where UIFWE is reasonably suspected to have arisen from the conduct, decision, instruction, interference or omission of a councillor, the municipality must assess whether such conduct constitutes a breach of the Code of Conduct for Councillors, a financial offence, or a criminal offence.
- 4.26. Where a UIFWE-recovery investigation indicates that a councillor may have:
 - 4.26.1. Improperly interfered in the administration of the municipality;
 - 4.26.2. Voted in favour of or supported a decision that contravened legislation;
 - 4.26.3. Instructed officials to act contrary to legal or procurement requirements;
 - 4.26.4. Authorised or permitted expenditure outside lawful authority; or
 - 4.26.5. Otherwise contributed to the incurring of UIFWE through action or omission;

The matter must be referred for consideration in terms of the Code of Conduct for Councillors Regulations and any applicable legislation. Such a referral must occur irrespective of whether recovery proceedings are also being pursued.

Criminal referrals

- 4.27. Where there is reasonable suspicion that an offence may have been committed in relation to UIFWE, the Accounting Officer must ensure that the matter is reported to the appropriate law-enforcement authority without delay.
- 4.28. Where it is reasonably suspected that the Accounting Officer may have committed a criminal offence in the incurring of UIFWE, the Mayor must ensure that the matter is reported without delay to the appropriate law-enforcement authority and that Council is informed accordingly.
- 4.29. Where it is reasonably suspected that a councillor, including the Mayor, may have committed a criminal offence in the incurring of UIFWE, the Speaker must ensure that the matter is reported without delay to the appropriate law-

enforcement authority and that Council is informed of the referral.

- 4.30. Where it is reasonably suspected that the Speaker may have committed a criminal offence in the incurring of UIFWE, the Mayor must ensure that the matter is reported without delay to the appropriate law-enforcement authority and that Council is informed of the referral.
- 4.31. Such a reporting obligation exists independently of disciplinary processes and must not be deferred pending internal investigations or Council consideration.
- 4.32. The municipality must retain records of criminal referrals and monitor their progress.

Reporting the UIFWE to the MPAC

- 4.33. Either the accounting officer or the Mayor should refer UIFWE incident reports directly to MPAC for their UIFWE recovery investigation.
- 4.34. Where the accounting officer or the Mayor is not able to submit the UIFWE report to the MPAC, any other senior manager/director of the municipality is empowered to submit UIFWE reports to the MPAC.

MPAC UIFWE-recovery considerations

- 4.35. The MPAC must conduct a UIFWE-recovery investigation in terms of sections 32(2)(a)(ii) and 32(2)(b) of the MFMA before the Municipal Council may certify any UIFWE as irrecoverable or approve its write-off.
- 4.36. The MPAC investigation for UIFWE recovery purposes is not a forensic investigation into the nature of the breach or the determination of disciplinary or criminal liability, which remains the responsibility of the disciplinary board and competent authorities. The MPAC investigation must therefore be limited to determining whether the UIFWE should be recovered due to a financial loss being suffered by the municipality, written off as irrecoverable, or, in the case of unauthorised expenditure, recommended for authorisation in an adjustments budget where legally permissible.
- 4.37. In performing its UIFWE-recovery investigation, the MPAC must regard recovery as the primary statutory objective. The MPAC must first assess whether the UIFWE incurred should be recovered from any official, political office-bearer or other liable person.
- 4.38. The MPAC may only recommend that UIFWE be written off as irrecoverable where it cannot rationally recommend that recovery should be pursued. Any recommendation submitted by MPAC to the Municipal Council must contain clear, rational and evidence-based reasons for recommending either recovery or write-off.
- 4.39. In discharging its UIFWE-recovery investigation function, the MPAC must, at a minimum, consider:
 - 4.39.1. The measures already taken by the municipality to recover the UIFWE;

- 4.39.2. The cost incurred in implementing those recovery measures; and
- 4.39.3. The estimated cost and likely benefit of any further recovery measures.
- 4.40. The MPAC must ensure that its recommendation is accompanied by a written motivation explaining how these factors were considered and how they informed its recommendation to Council.
- 4.41. In every UIFWE-recovery investigation, the MPAC must also assess whether the matter has been referred to the disciplinary board or relevant authority for consideration of financial misconduct or other disciplinary processes. Where no such referral has been made, the MPAC must recommend to the Municipal Council that the matter be referred in terms of Chapter 15 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.
- 4.42. Under regulation 74(2) of the Municipal Budget and Reporting Regulations, 2008, the accounting officer must serve as the primary conduit for information required by the MPAC for UIFWE recovery investigations. The MPAC may request any documentation or information it reasonably requires, including:
 - 4.42.1. Financial records;
 - 4.42.2. Contracts and SCM documentation;
 - 4.42.3. Correspondence relevant to the UIFWE incurred;
 - 4.42.4. Audit findings;
 - 4.42.5. Investigation reports; and
 - 4.42.6. Any other relevant material deemed relevant to the UIFWE-recovery investigation.
- 4.43. The accounting officer must provide all requested information to the MPAC without delay. Information requested by MPAC must be provided within five (5) working days of the MPAC request. Failure by officials to cooperate with MPAC information requests will result in consequences in terms of relevant council policies.

MPAC UIFWE-recovery recommendation to Council

- 4.44. After completing its UIFWE-recovery investigation, the MPAC must submit a written recommendation to the Municipal Council.
- 4.45. The MPAC recommendation must include:
 - 4.45.1. A summary of the facts;
 - 4.45.2. The financial impact;
 - 4.45.3. The UIFWE-recovery assessment outcome;

- 4.45.4. The regulation 74 considerations;
- 4.45.5. The consequence management assessment; and
- 4.45.6.** The recommended Council decision.

Council UIFWE-determination

- 4.46. Council must consider MPAC's recommendations together with all supporting evidence and must determine whether the UIFWE is recoverable, irrecoverable and requires further legal action.
- 4.47. Council must record its decision by a normal majority resolution supported by reasons in terms of the municipality's rules of order.

UIFWE-recovery measures

- 4.48. Where Council determines that UIFWE is recoverable, the Accounting Officer must institute recovery measures, which may include civil proceedings, lawful salary deductions, or any other legal mechanism available to the municipality.
- 4.49. The recovery of UIFWE must be effected in terms of the relevant policies of the municipality.
- 4.50. Progress on UIFWE-recovery must be reported to Council every quarter.
- 4.51. The recovery of UIFWE from a municipal official or councillor does not prevent the referral of UIFWE incurred for investigation by the disciplinary board for municipal officials, law-enforcement authority or municipal official or councillor disciplinary measures.
- 4.52. Where a municipal official or councillor has left the municipality for any reason and has been found responsible for the UIFWE incurred, UIFWE-recovery should continue in terms of any relevant policy of the municipality.
- 4.53. For any other persons, including suppliers, seconded persons or other persons contracted to be staff members at the municipality, who have been identified as responsible for the UIFWE incurred, UIFWE-recovery should be processed in terms of any relevant policy of the municipality.
- 4.54. Where UIFWE was incurred as a result of the conduct or involvement of more than one person, including officials, councillors and/or external parties, those persons may be held jointly and severally liable for the UIFWE incurred by the municipality. In such circumstances, the municipality may pursue recovery from any one or more of the persons involved for the full amount of the loss, without prejudice to the municipality's right to recover proportionate contributions from other liable parties.
- 4.55. The determination of joint or shared responsibility must be informed by the investigation findings, applicable law, contractual obligations and the degree to which each person's conduct contributed to the UIFWE incurred.

5. UIFWE register

- 5.1. The municipality must maintain a central UIFWE register forming part of its official financial records.
- 5.2. The register must contain at least the following information:
 - 5.2.1. Reference number;
 - 5.2.2. Type of UIFWE;
 - 5.2.3. Amount;
 - 5.2.4. Date detected;
 - 5.2.5. Responsible department;
 - 5.2.6. Alleged responsible persons;
 - 5.2.7. Investigation status;
 - 5.2.8. Disciplinary status;
 - 5.2.9. Criminal referral details;
 - 5.2.10. Council decision; and
 - 5.2.11. Recovery status.
- 5.3. The register must be continuously updated and must be capable of reconciliation to the accounting system and annual financial statement disclosures.

6. Practical considerations

- 6.1. Where the municipality experiences practical, administrative or institutional difficulties in processing unauthorised, irregular, fruitless or wasteful expenditure, including delays arising from capacity constraints, conflicts of interest, vacancies, or operational bottlenecks, the municipality must utilise its approved system of delegations in order to ensure that UIFWE recording, investigation, reporting and decision-making processes continue without interruption.
- 6.2. In applying the system of delegations, the Accounting Officer, Mayor, Speaker or Council, as may be appropriate, must ensure that any delegated authority is exercised lawfully, transparently and within the limits of the municipality's delegation framework, and that such delegation does not undermine statutory responsibilities imposed by the MFMA. The use of delegations must therefore serve to facilitate lawful UIFWE processing and may not be used to avoid accountability or to delay the exercise of statutory duties.

7. Review and amendment of the Policy

- 7.1. This Policy must be reviewed periodically in order to ensure continued alignment with the MFMA, applicable regulations, National Treasury guidance, audit findings and the operational needs of the municipality.
- 7.2. In addition to periodic review, the municipality must review this Policy where:
 - 7.2.1. Legislative or regulatory amendments affect UIFWE processes;
 - 7.2.2. Audit findings or oversight recommendations indicate weaknesses in UIFWE management;
 - 7.2.3. Institutional changes require clarification of roles, procedures or reporting lines; or
 - 7.2.4. Practical implementation challenges reveal gaps or ambiguities in the Policy.
- 7.3. The Council must approve any amendment to this Policy following consideration of a formal submission setting out the reasons for the amendment, the proposed changes and the implications for financial governance and oversight.
- 7.4. Until amendments are approved by Council, the existing provisions of this Policy remain binding on all officials and councillors.

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