



## REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70463765
CASE OFFICER	Y Joffa (G Soeker)
CASE OFFICER PHONE NO	021 444 9536
DISTRICT	Southern
REPORT DATE	05/08/2019

ITEM NO **MPTSW39/08/19**

**WARD 59: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): REMAINDER ERVEN 55367 AND 55368 AND PORTION OF ERF 55351 CAPE TOWN AT CLAREMONT, 18 AND 20 FREDERICK ROAD**

### 1. EXECUTIVE SUMMARY

Property description	Remainder Erven 55367 and 55368 and portion of Erf 55351 Cape Town at Claremont
Property address	18 and 20 Frederick Road
Site extent	203m <sup>2</sup> , 203m <sup>2</sup> and ± 406m <sup>2</sup> respectively (the total site extent is ± 812m <sup>2</sup> and total registered extent is 1213m <sup>2</sup> )
Current zoning	General Residential Subzone GR4
Current land use	Parking
Overlay zone applicable	None
Submission date	04/07/2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised parking
Has owner applied for the determination of an administrative penalty	Yes
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	No
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	No notice was served on the owner, however a property inspector had investigated this property in March 2019 and informed the owner that a land use application was required.

### 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

### **3 BACKGROUND / SITE HISTORY**

- 3.1 The property is zoned General Residential Subzone GR4 and is a vacant site comprising of 3 erven. A temporary departure application was approved by the Protea Subcouncil on 15/02/2011 with the final notification letter being issued on 20/05/2011. The conditions of approval are attached as Annexure E. Condition 2.1.1 states that "The Temporary Departure shall be valid for 2 years from the date of approval or until the building work taking place on the Vineyard Hotel ceases, whichever occurs first." It is thus clear that the temporary departure lapsed in 2013, if not earlier.
- 3.2 A temporary departure application was received on 15/05/2019 following an inspection by a property inspector in March 2019 where the owner was informed that the temporary departure had lapsed. The application was incomplete. It is now ready for advertising.

### **4 SUMMARY OF APPLICANT'S MOTIVATION**

The applicant's motivation (see Annexure C) may be summarised as follows:

- A new application was made immediately after the owner became aware that the previous departure had expired.
- The extent of the contravention is of a minor nature. It will have no economic or social impact.
- The illegal use has never previously been contravened.
- No notices or summons have been served, therefore Council had no administrative costs to date.
- At present there is no illegal use that relates to building work and or any other construction departures that would need assessment by Council.
- Before the on-site parking was formalized the general public parked their vehicles on the property.
- As parking in Claremont is in short supply, the use of this parking area is of great benefit to the surrounding area especially to the local residents.
- In general, unmanaged vacant land is not desirable as it attracts unwanted elements. Prior to the existing use, the owner had endless trouble with vagrants, litter and squatters. It was primarily because of complaints from surrounding neighbours that the formalized parking was originally introduced.
- The Vineyard Hotel is the sole lessee of the parking.
- The parking is utilized exclusively for the staff of the Hotel who previously had nowhere to park except in the surrounding residential area.
- Since the Hotel had been using the land, the parking has been formalized, controlled, supervised and maintained on a regular basis.
- The Hotel maintains the property regularly which was never done previously.
- The Hotel provides security all day and at night.
- Granting this application will be a huge benefit to all and the contravention is very minor.

### **5 ASSESSMENT OF APPLICATION**

- 1268
- 5.1 The unauthorized parking area is in contravention of Items 40 and 138 of the Development Management Scheme (DMS).
  - 5.2 In terms of Section 129(7)(b) of the By-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.
  - 5.3 The municipal valuations of Erven 55367, 55368 and 55351 are R0, R1 120 000.00 and R3 900 000.00 respectively as per the General Valuation 2018 (see Annexure D).
  - 5.4 Approximately half of Erf 55351 is used for parking, and hence the municipal value of the portion of the property that is used for parking is R1 950 000.
  - 5.5 An amount which is not more than 100% of R3 070 000.00 may be imposed as an administrative penalty.
  - 5.6 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law:

**a) The nature, duration, gravity and extent of the contravention**

Nature – The unauthorized parking area is not permitted to operate on a General Residential GR4 property.

Duration – The first temporary departure to permit a parking lot lapsed in 2013. The duration of the contravention is thus long.

Gravity – The gravity of the contravention is moderate. The parking area is a vacant piece of land and has same advantages for the surrounding neighbours in the area. Inter alia, it eliminates loitering and possible land invasion. However, the parking area, which serves a distant hotel (ie the Vineyard Hotel) increases traffic in this local road and to some extent negatively effects the character of the local area (ie has a negative visual impact), which is very much residential.

Extent – The area of the parking is ±812m<sup>2</sup>. The extent of the contravention is therefore large.

**b) The conduct of the person involved in the contravention**

The current temporary departure application was only submitted in June 2019 after the owner was contacted by a property inspector. The owner is a well-known developer who has done many previous developments and personally submitted and coordinated many land use applications (and also submitted various objections to applications). He is well aware of planning laws and procedures and cannot claim ignorance as to the lapsing of the temporary departure. Furthermore, the applicant was not factual when completing the administrative penalty application form when he stated that he had not previously contravened the MPBL or any previous planning law. He also grossly under estimated the municipal valuations. The conduct of the owner cannot be condoned.

**c) Whether the unlawful conduct has stopped**

The unlawful conduct has not stopped.

**d) Whether a person involved in the contravention has previously contravened this By-Law or any other planning law**

As far as can be ascertained, the owner has previously contravened this By-Law and other planning law in at least the following instances:

- (i) The temporary departure for the subject property that was approved in 2011 was to regularize an existing contravention. That was only submitted as a result of a notice served by a property inspector.
- (ii) The same owner also operates a parking area on Erven 50390 and 50391 Cape Town, at 16 Protea Road, Claremont that is also unauthorized. A temporary departure application was only submitted in 2019 as a result of an inspection by a property inspector.
- (iii) The owner allowed his property at Erf 55059 Cape Town, at 18 Brooke Street, Claremont to be used for an unauthorized early childhood development centre (this also went through an administrative penalty process).

- 5.7 In view of the above mentioned considerations, and particularly the conduct of the owner, and the fact that he has previously contravened the MPBL and other planning laws, and that in part or least, administrative penalties are intended and be a deterrent, this Department recommends that an administrative penalty of R10 000.00 be imposed. (Simply for comparative purposes, note that this amounts to  $\pm 0,3\%$  of the maximum amount that can be imposed.)

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarized as follows:

- 6.1 The administrative penalty is required for the parking area that contravenes Items 40 and 138 of the Development Management Scheme.
- 6.2 The extent of the contravention is large (812m<sup>2</sup>).
- 6.3 The duration of the contravention is long.
- 6.4 The gravity of the contravention is moderate.
- 6.5 The current temporary departure application was only submitted in June 2019 after the owner was contacted by a property inspector. The owner is a well-known developer who is well aware of planning laws and procedures and cannot claim ignorance as to the lapsing of the temporary departure. Furthermore, the applicant was not factual when completing the administrative penalty application form when he stated that he had not previously contravened the MPBL or any previous planning law. The conduct of the owner cannot be condoned.
- 6.6 The owner has previously contravened the Municipal Planning By-Law, 2015 and other planning law on a number of properties.

## **7 RECOMMENDATION**

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R10 000.00 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Remainder Erven 55367 & 55368 and portion of Erf 55351 Cape Town at Claremont, with regard to the unauthorised parking as per the plan with drawing number JRA FRED2 dated 21/06/2019.

#### ANNEXURES

Annexure A	Locality plan
Annexure B	Site Development Plan
Annexure C	Applicant's motivation
Annexure D	Municipal valuations
Annexure E	Previous conditions of approval




---

#### Section Head : Land Use Management

Name P Hoffa

Tel no 021 444 7724

Date 2019-08-05

Comment




---

#### Acting District Manager

Name P Hoffa

Tel no 021 444 7724

Date 2019-08-05

Comment



Overview

Erf: 55367

District: SOUTHERN

Allotment: CAPE TOWN

Suburb: CLAREMONT

Ward: 59

Sub Council: Subcouncil 20



1:300

Notices Served



Support  
Received



Petition  
Signatory



Objections  
Received



Generated by:

Date: Thursday, July 25, 2019

File Reference:



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

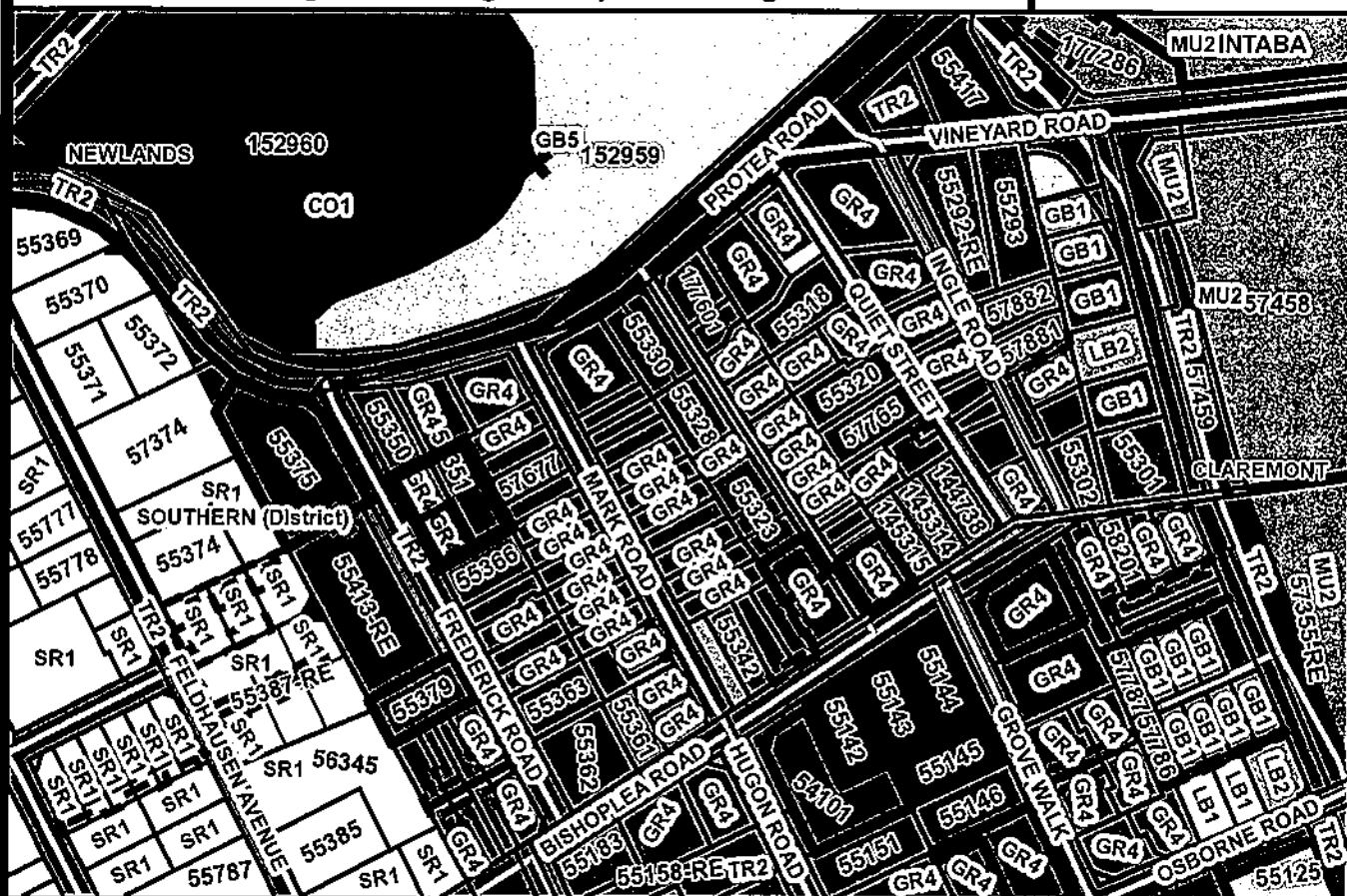
Making progress possible. Together.

# ZONING MAP

## Planning and Building Development Management

1272

ANNEXURE : A



### Zoning Legend

Mixed Use 2		MU2
Single Residential 1 : Conventional Housing		SR1
Transport 2 : Public Road and Public Parking		TR2
General Residential 4		GR4
Open Space 2 : Public Open Space		OS2
General Business 5		GB5
General Business 1		GB1
Local Business 2 : Local Business		LB2
Local Business 1 : Intermediate Business		LB1
Community 1 : Local		CO1
Transport 1 : Transport Use		TR1

Erf: 55367, 55368 + portion of 55351 Allotment: CAPE TOWN

District: SOUTHERN

Suburb: CLAREMONT

Ward: 59

Sub Council: Subcouncil 20



1:2 400

Disclaimer: The City of Cape Town makes no warranties as to the correctness of the information supplied. Persons relying on this information do so entirely at their own risk. The City of Cape Town will not be liable for any claims whatsoever, whether for damages or otherwise, which may arise as a result of inaccuracies in the information supplied.

Generated by:

Date: Thursday, July 25, 2019

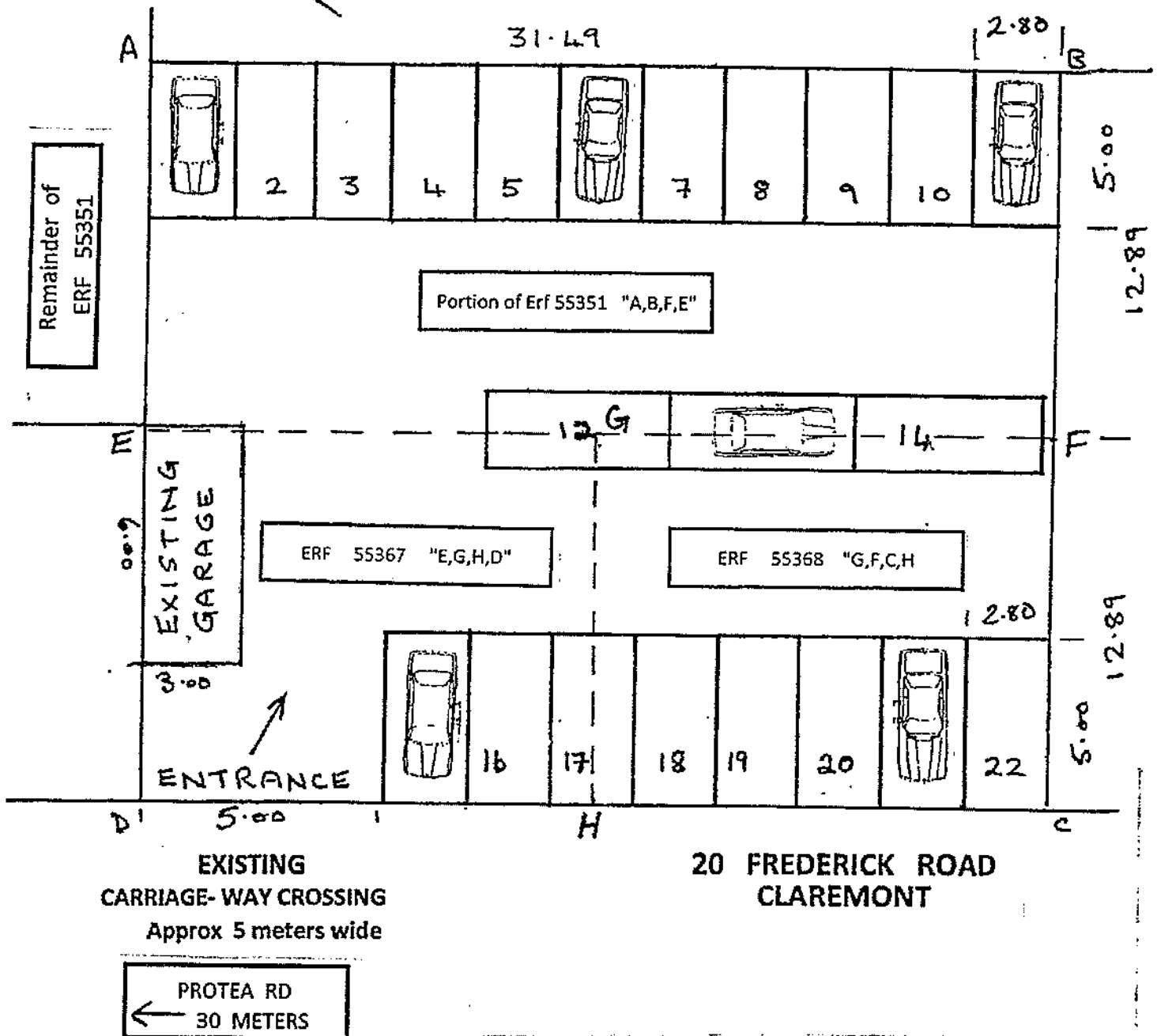
File Reference:



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Making progress possible. Together.

ANNEXURE-3



OWNER : JOHN ALLEN

**SITE LAYOUT PLAN      20 FREDERICK ROAD CLAREMONT**

ERF 55367 203 m2 & 55368 203 m2

Portion of ERF 55351 406m2

APPLICATION FOR  
TEMPORARY DEPARTURE FOR ON SITE PARKING

DRAWING No. JRA FRED2

Project No 3 / 2019      SCALE 1 : 20

**DATE 21 June 2019**

Applicant J. ALLEN



APPLICATION FOR DETERMINATION OF ADMINISTRATIVE PENALTY  
ERF 55367 & 55368 and portion of 55351 CAPE TOWN  
BEING 20 FREDERICK ROAD, CLAREMONT 21<sup>th</sup> June 2019

NATURE OF APPLICATION

1274

John Allen is the owner and the applicant.

This application in respect of Erf 55367 & 55368 & portion of 55351 is for the determination of the administration penalty to formalise the present departure for "on-site parking", which has expired. The property is at present vacant.

MOTIVATION

I, John Allen being the owners, was unaware that the departure had to be renewed, and feel that the Council should waive any administrative penalty.

- Support of this motivation is as follows:
- A new application was made immediately after becoming aware that the present departure had expired.
- The extent of the contravention is of minor nature as it will have no economic or social impact.
- The illegal use has never previously been contravened.
- No notices or summons have been served. Therefore, Council has had no administration costs to date.
- At present there is no illegal use that relates to building work and or any other construction departures that would need assessment by council.
- Before the "On-site Parking" was formalised the general public parked their vehicles on the property.
- As parking in Claremont, is in a short supply, the use of this parking area is of great benefit to the surrounding area especially to the local residents.
- In general, un-managed vacant land is not desirable as it attracted unwanted elements. Prior to the existing use, I as the owner had endless trouble with vagrants, litter and squatters. It was prime merryly because of complaints from the surrounding neighbours that the formalised parking was originally introduced.
- The Vineyard Hotel is now the sole lessee of the parking which is utilised exclusively for the staff of the Hotel who previously had to park in the surrounding residential areas.
- The Hotel to date maintains the property regularly. (which was never done previously)
- The Vineyard Hotel provides permanent security all day and at night.

CONCLUSION

Parking is in a short supply in the Claremont and this application will be a huge benefit to all. The contravention is very minor and if anything is an asset to the surrounding area.

I trust and request that this application will be approved without any administration penalty.

Yours faithfully

John Allen



1275

CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Making progress possible. Together.

[Home](#) | [General Valuations Home](#) | [Site guide](#)

Wed, 31 Jul 2019

## City of Cape Town: Valuation Roll GV2018

[Previous](#) [Search](#) [Close](#)

## Rates Estimation

Kindly note that:

"To understand the financial implications of your GV2018 property valuation the following estimated monthly rates liability has been calculated based on the proposed rate-in-the-rand that was tabled at Council during March 2019 for public comment.

The estimated calculation has only taken into account the statutory and City determined reduction amounting to R300 000 per residential property value and not any other individual rebate that may be granted on application.

Exemptions, reductions and rebates as prescribed by the Municipal Property Rates Act of 2004 and the City's Rates Policy should be applied for, and are therefore excluded from the estimation.

Disclaimer:

This information is provided as a service to the users of this website. The information and calculation of potential rates liability is only an indicative amount and may fluctuate subject to the number of days in the month. The final amount will be determined when the City of Cape Town adopts its 2019/2020 budget in May 2019. The City of Cape Town accepts no liability for incorrect information and calculation of rates."

## Rates for 2019/2020 Financial Year

Rate-in-the-rand: 0.00550

Rates Relief: R 300,000.00

Property Reference	CCT010860400000
Property Type	RES
Erf/Farm Number	55351
Physical Address	63 PROTEA CLAREMONT
Total Extent	808.0000
Existing Use	A01
Allotment Area	CAPE TOWN
Rating Category	RESIDENTIAL

Value of Property R 3,900,000.00

1276

Residential Exclusion	R 300,000.00
Rateable Value	R 3,600,000.00
Estimated Annual Rates	R 19 980.00
Estimated Monthly Rates	R 1 665.00

*For Rates and Valuation Enquiries Tel.: 086 010 3089 Email: [valuations@capetown.gov.za](mailto:valuations@capetown.gov.za)*

© City of Cape Town, 2019

[| Copyright](#) | [Privacy](#) | [Disclaimer](#) |

1277



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Making progress possible. Together.

[Home](#) | [General Valuations Home](#) | [Site guide](#)

Wed, 31 Jul 2019

## City of Cape Town: Valuation Roll GV2018

[Previous](#)[Search](#)[Close](#)

## Rates Estimation

Kindly note that:

*"To understand the financial implications of your GV2018 property valuation the following estimated monthly rates liability has been calculated based on the proposed rate-in-the-rand that was tabled at Council during March 2019 for public comment.*

*The estimated calculation has only taken into account the statutory and City determined reduction amounting to R300 000 per residential property value and not any other individual rebate that may be granted on application.*

*Exemptions, reductions and rebates as prescribed by the Municipal Property Rates Act of 2004 and the City's Rates Policy should be applied for, and are therefore excluded from the estimation.*

Disclaimer:

*This information is provided as a service to the users of this website. The information and calculation of potential rates liability is only an indicative amount and may fluctuate subject to the number of days in the month. The final amount will be determined when the City of Cape Town adopts its 2019/2020 budget in May 2019. The City of Cape Town accepts no liability for incorrect information and calculation of rates."*

## Rates for 2019/2020 Financial Year

Rate-in-the-rand: 0.01110

Rates Relief: R 0.00

Property Reference	CCT016147600000
Property Type	VAC
Erf/Farm Number	55367
Physical Address	18 FREDERICK CLAREMONT
Total Extent	0.0000
Existing Use	E05
Allotment Area	CAPE TOWN
Rating Category	VACANT LAND

Value of Property R 0.00

		1 278
Residential Exclusion	R 0,00	
Rateable Value	R 0,00	
Estimated Annual Rates	R 0,00	
Estimated Monthly Rates	R 0,00	

For Rates and Valuation Enquiries Tel.: 086 010 3089 Email: [valuations@capetown.gov.za](mailto:valuations@capetown.gov.za)

© City of Cape Town, 2019

[I Copyright](#) | [Privacy](#) | [Disclaimer](#) |

1279



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Making progress possible. Together.

[Home](#) | [General Valuations Home](#) | [Site guide](#)

Wed, 31 Jul 2019

## City of Cape Town: Valuation Roll GV2018

[Previous](#)

[Search](#)

[Close](#)

### Rates Estimation

Kindly note that:

*"To understand the financial implications of your GV2018 property valuation the following estimated monthly rates liability has been calculated based on the proposed rate-in-the-land that was tabled at Council during March 2019 for public comment.*

*The estimated calculation has only taken into account the statutory and City determined reduction amounting to R300 000 per residential property value and not any other individual rebate that may be granted on application.*

*Exemptions, reductions and rebates as prescribed by the Municipal Property Rates Act of 2004 and the City's Rates Policy should be applied for, and are therefore excluded from the estimation.*

Disclaimer:

*This information is provided as a service to the users of this website. The information and calculation of potential rates liability is only an indicative amount and may fluctuate subject to the number of days in the month. The final amount will be determined when the City of Cape Town adopts its 2019/2020 budget in May 2019. The City of Cape Town accepts no liability for incorrect information and calculation of rates."*

### Rates for 2019/2020 Financial Year

Rate-in-the-land: 0.01110

Rates Relief: R 0.00

Property Reference	CCT010455300000
Property Type	VAC
Erf/Farm Number	55368
Physical Address	20 FREDERICK CLAREMONT
Total Extent	406.0000
Existing Use	E05
Allotment Area	CAPE TOWN
Rating Category	VACANT LAND

Value of Property R 1,120,000.00

Residential Exclusion	R 0,00	1 280
Rateable Value	R 1,120,000,00	
Estimated Annual Rates	R 12 432,00	
Estimated Monthly Rates	R 1 036,00	

For Rates and Valuation Enquiries Tel.: 086 010 3089 Email: [valuations@capetown.gov.za](mailto:valuations@capetown.gov.za)

© City of Cape Town, 2019

[Copyright](#) | [Privacy](#) | [Disclaimer](#)

*CONDITIONS OF TEMPORARY DEPARTURE APPROVED IN 2011*

In this annexure:

"Council" means the City of Cape Town

1281

"The owner" means the registered owner of the property

"The property" means Remainder Erven 55367 and 55368 and a portion of Erf 55351 Cape Town at Claremont, Frederick Road, as depicted on the Site Development Plan LUM/00/55368.

"Scheme Regulations" has the meaning assigned thereto by Ordinance 15 of 1985

APPLICATION NUMBER: 193501  
FILE REFERENCE: LUM/00/55368

**1. TEMPORARY DEPARTURE GRANTED IN TERMS OF SECTION 15 OF THE LAND USE PLANNING ORDINANCE NO OF 15 OF 1985:**

1.1 To permit the properties to be used for parking purposes.

**2. CONDITIONS IMPOSED IN TERMS OF SECTION 42 OF THE LAND USE PLANNING ORDINANCE NO.15 OF 1985:**

**2.1 Land use**

2.1.1 The Temporary Departure shall be valid for 2 years from the date of approval or until the building work taking place on the Vineyard Hotel ceases, whichever occurs first.

2.1.2 The conditions attached to this approval do not exempt the owner from compliance with any other laws or requirements.

2.1.3 The property may not be used for advertising of any sort.

2.1.4 The Council may, if it is of the opinion that the activity is being conducted in a manner which is or is likely to be detrimental to the residential environment or a source of nuisance, or different in any way from that stipulated in this application, serve notice in writing on the person conducting such activity calling upon him/her to:

- (a) Comply with instructions set out in such notice, or
- (b) Cease using the premises in question for such activity, by the date specified in such notice.

2.1.5 The parking lot shall be restricted to Vineyard Hotel staff and clients only.

2.1.6 A sign shall be erected stating that the parking is restricted for the use of the Vineyard Hotel only.

2.1.7 This permission is only valid as long as there is a valid lease between the property owner and the Vineyard Hotel.

2.1.8 A car guard must be available on the property during working hours.



2.1.9 The property shall be neatly maintained to the satisfaction of the Director:  
Planning & Building Development Management.

1282

## **2.2 Roads and Stormwater**

2.2.1 The existing brick paving behind the existing carriageway crossing must be extended by the owner to encompass an area of 2m wide and 3m deep. The perimeter of the paving must consist of concrete edge beams or road edging. This must be completed to the satisfaction of the Director: Roads and Stormwater within 1 month of the approval of this application.

## **2.3. Transport**

2.3.1 All parking on, access to and egress from the property shall be to the satisfaction of the Director: Transport