



**REPORT TO MUNICIPAL PLANNING TRIBUNAL**

CASE ID	70457581
CASE OFFICER	M. Collison/Xolisa Mato
CASE OFFICER PHONE NO	021 684 4341
DISTRICT	Cape Flats
REPORT DATE	22 May 2019

**ITEM NO MPTSW50/06/19**

**APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): IN RESPECT OF ERF 36234, CAPE TOWN AT 128 TAURUS ROAD, SURREY ESTATE**

**1. EXECUTIVE SUMMARY**

Property description	Erf 36234, Cape Town
Property address	128 Taurus Road, Surrey Estate
Site extent	480m <sup>2</sup>
Current zoning	Single Residential 1
Current land use	Unauthorised early childhood development centre (ECD) operating from existing dwelling house
Overlay zone applicable	No
Submission date	15 April 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, operation of an early childhood development centre (ECD).
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

## 2. DECISION AUTHORITY

411

For decision by the Municipal Planning Tribunal.

## 3. BACKGROUND / SITE HISTORY

Erf 36234 at 128 Taurus Road, Surrey Estate ("the property") is zoned Single Residential 1 (SR1). The property is developed with a main dwelling from which an ECD centre is operating illegally. The use of the main dwelling for the purpose of an ECD centre is in contravention of the Development Management Scheme (DMS).

It must be noted that in terms of Section 7(1)(c) of the DMS, a 5m building line restriction is applicable as a result of the use of the property for the purposes of an ECD. Portions of the existing structures therefore contravene the 5m building line and are also in contravention of the DMS.

## 4. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is attached as **Annexure C** and may be summarised as follows:

- The building on the property is used solely for Early Childhood Development Centre that currently accommodates 60 children.
- The operators are intent on formalizing the Place of Instruction use through the submission of an administrative penalty application and consent use application for the regularization of the existing use.
- The crèche began as a service delivered only to family and friends, with no intention or foresight of growing it into a formal crèche facility.
- This application comes as a result of the growth of the facility and an acknowledgement of the need to formalize the use and adhere to all applicable land use rules and regulations.

## 5. ASSESSMENT OF APPLICATION

5.1 As indicated above, the unauthorized use is in contravention of the Development Management Scheme.

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 It is noted that an unauthorised structure exists on site.

5.4 **Administrative Penalty: Calculation for unauthorised land use**

$$\frac{\text{Total Municipal Value of property}}{\text{Total area of property (m}^2\text{)}} \times \text{Total Unlawful Area (m}^2\text{)} = R$$

1 4 1 2

Total Municipal Value of property	=	R790 000
Total area of property (m <sup>2</sup> )	=	480m <sup>2</sup>
Value per m <sup>2</sup>	=	R 1646
Total Unlawful Area	=	480m <sup>2</sup>
Total Value of Unlawful Area	=	R 790 080

An amount which is not more than 100% of **R 790 080** may be imposed as an administrative penalty for the unauthorized use of the property.

**Administrative Penalty: Calculation for Structures within 5m building line**

Verandas (portions within the 5m Common Boundary Building Line):  
R 1020 X 64m<sup>2</sup> = R65 280

Dwelling (ECD) (Portions within the 5m Common Boundary Building Line)  
R 7020 X 90m<sup>2</sup> = R631 800

An amount which is not more than 100% of **R697 080** may be imposed as an administrative penalty for the structures which contravene the DMS.

- 5.5** 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 existing dwelling and two verandas, as well as the remaining outdoor area is being used for a ECD centre for 60 children.

**Duration:** According to the application form, the ECD centre has been in operation unlawfully for a duration of 4 years. This is considered to be long term duration.

**Gravity:** the gravity is considered to be serious as a result of the ECD centre operating unlawfully. This may mean that the ECD centre does not comply with the standards required by the City to make sure that young children and staff are safe at all times.

**Extent:** The entire property of 480m<sup>2</sup> is used for the ECD. The building line contraventions measure 154m<sup>2</sup> in total. It is noted that this second contravention is technical in nature.

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

The crèche operator approached a consultant to assist with the Administrative Penalty application, indicating a level of willingness to legalize the unauthorized land use.

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

The unauthorized ECD center is fully operational.

- 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 current owner has not previously contravened this By-Law or any other planning law.

- 5.6 Having considered the factors mentioned above. This department recommends that an administrative penalty of **R2000.00** be imposed.

## 6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The ECD is operating without the City's approval and the entire property is being utilized for this purpose.  
 6.2 The duration is considered to be long term as the facility has been operating for the past 4 years.  
 6.3 The total extent of the contraventions is large.  
 6.4 The gravity of the contravention is considered to be serious.  
 6.5 As far as can be ascertained the owner of the property has not previously contravened the Municipal Planning By-Law or any other planning law.

## 7. RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R2000.00** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 36234 Cape Town at 128 Taurus Road, Surrey Estate.

## ANNEXURES

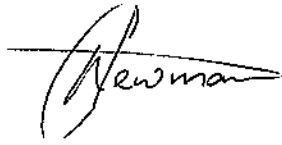
Annexure A	Regional Locality Plan
Annexure A1	Locality Plan
Annexure B	Site development plan showing contravention
Annexure C	Applicant's motivation

*A McCann*

### Section Head : Land Use Management

		Comment
Name	A McCann	
Tel no	021 6844341	
Date	31 May 2019	

1414



---

**District Manager**

Name Chad Newman

Tel no 021 684 4310

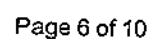
Date 03 June 2019

Comment

---

---

**ANNEXURE : A**

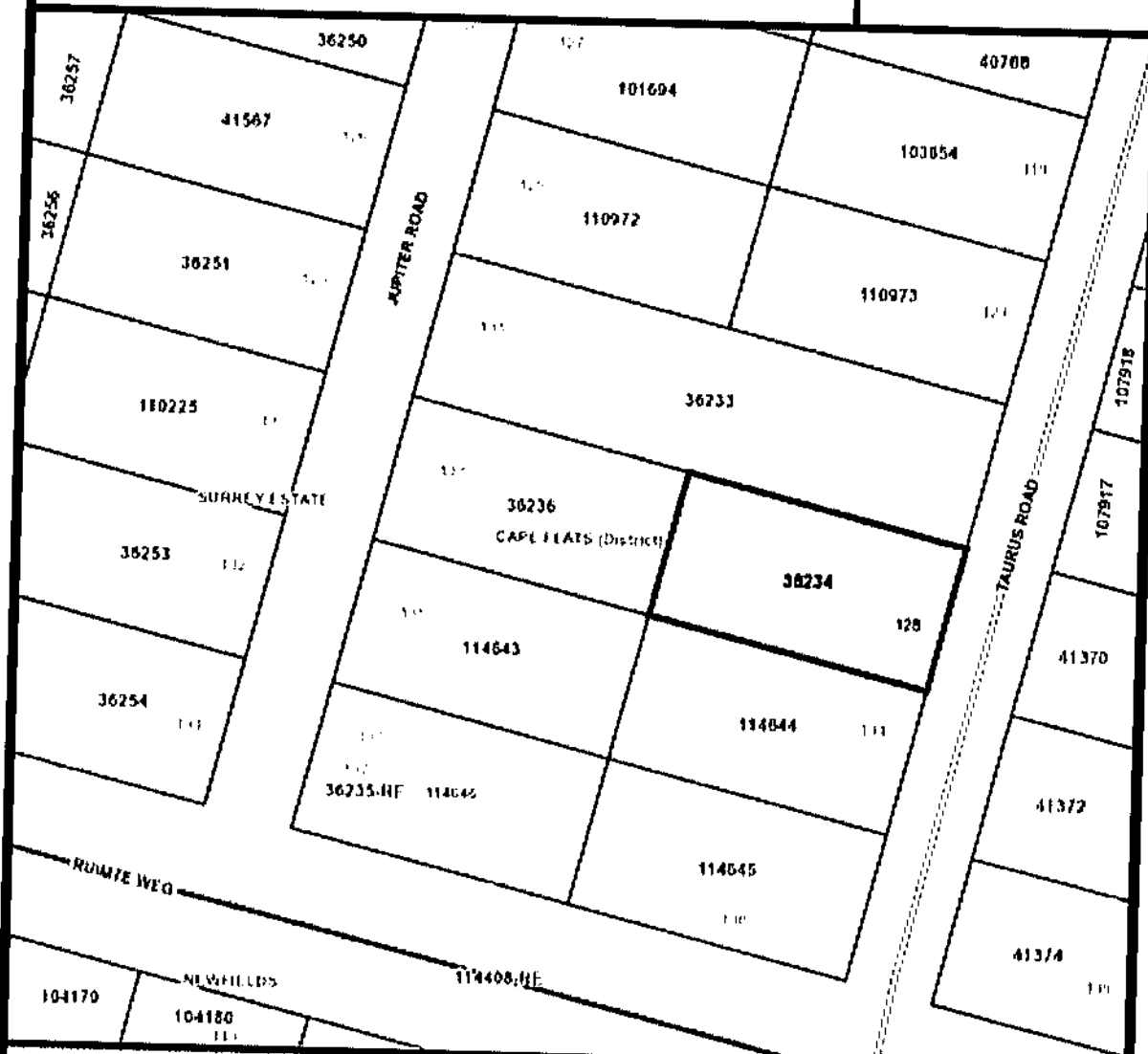


# ANNEXURE A1: LOCALITY PLAN

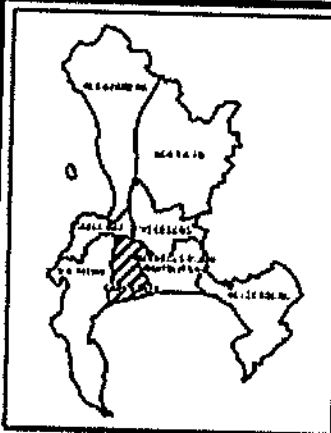
1416

## PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

ANNEXURE : A1



### Overview



Er: 36234

Allocation: CAPE TOWN

Vard: 48

District: CAPE FLATS

Suburb: SURREY ESTATE

Sub Council: Subcouncil 11



1:600

Notices Served



Support  
Received



Petition  
Signatory



Objections  
Received



Generated by: X Mato

Date: Monday, 27 May 2019

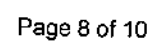
File Reference:



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Municipal Engineering and Planning Department

## 1417





## ANNEXURE C: APPLICANTS MOTIVATION

1418

### 2. MOTIVATION

The building on the property is used solely for an Early Childhood Development Centre that currently accommodates 60 children. The operators are intent on formalising the place of instruction use through the submission of an administrative penalty application and a consent use application for the regularisation of the existing use.

The creche began as a service delivered only to family and friends, with no intention or foresight of growing it into a formal creche facility. This application comes about as a result of the unprecedented growth of the facility in the last year alone, and an acknowledgement of the need to formalise the use and adhere to all applicable land use rules and regulations.

In terms of section 129 of the MPBL, the following factors must be considered when determining an appropriate penalty:

#### 2.1. Nature, Duration, Gravity and Extent of the Contravention

##### 2.1.1. Nature and Duration of Contravention

The nature of the contravention is use related where the entire site is used solely for the operation of the ECD. The property has undergone alterations and obtained the relevant building plan approvals. Although the relevant land use rights are not in place, the creche is fully compliant with health and safety regulations and have the relevant certification.

The contravention has taken place for the last 4 years (since 2015).

##### 2.1.2. Gravity of Contravention

The creche provides a service to many families in and around the area and its growth in popularity over the last year indicates its response and fulfillment of community need. No complaints have been received from neighbours or the general public and therefore, aside from the use right not formally being in place, the creche has operated successfully. In this regard, the gravity of the contravention is not considered to be serious and a reduced penalty is motivated as it clearly is a service to the local community and is much needed.

##### 2.1.3. Extent of Contravention, and Motivated Penalty:

The contravention is calculated as the total area which is being used as a place of instruction without Council's consent – refer to Area Contravention Plan. The total indoor and outdoor contravention extent is measured as a percentage of the total extent of the site. This percentage is multiplied by the municipal value of the property. The 2015 valuation roll attributes a property market value of R 790 000 whereas the 2018 valuation gives a property market value of R 670 000. The 2018 valuation will be used since its effective date is from 01-07-2019 which will be in effect by the time the administrative penalty is being decided on. The administrative penalty is further calculated as 1% of the result. The suggested penalty is calculated as follows:

Indoor creche area	128m <sup>2</sup>
Outdoor area (verandahs, and open play area)	235m <sup>2</sup>

Percentage contravention

1 4 1 9

$363/480 \times 100$

76%

Property value (according to City of Cape Town 2018 Valuation Roll)

R 670 000

76% of 670 000

R 509 200

Penalty at 1%

R 5 092

Further reduction to penalty at 50%

R 2 546

A further reduction is pursued as a result of the social benefit that the facility provides to the community in the surrounding and broader areas as well as the fact that no complaints have been received from neighbours.

## 2.2. The conduct of the person involved in the contravention

The creche operators have conducted themselves correctly. They were unaware that what started out as a good-natured favour of caring for family and friends' children would gain traction with numerous households in the area. The facility has grown exponentially in the last year alone resulting in their aim to align the use within land use regulations, starting with the formalisation of the creche use.

## 2.3. Whether the unlawful activity has stopped

No. Although the operator is willing to cease the contravention, this proves unrealistic due to the impractical assumption that upon turning away 60 children, that alternative places can be found for these children. Parents and guardians need time to make suitable, alternative arrangements and the reduction of children may only be achieved by the time a decision is taken on the land use applications. Bearing these factors in mind, and that no complaints against the ECD have been received from the neighbours, it will continue to operate.

## 2.4. Whether the person involved in the contravention has previously contravened the By-law

The property owners have not previously contravened the By-law.

## 3. CONCLUSION

The owners of the property are currently operating a creche from their single residential property without the appropriate land use rights to do so. This was as a result of the unprecedented demand for the services rendered at the property which began as a favour to family and friends. Given the immense growth in the number of children accommodated at the creche, the intention is to formalise the use.