



# Mobile Food Vendors Location Rules Policy

REFERENCE NUMBER:	Doc/17/128690
RESPONSIBLE DEPARTMENT:	Council Services
APPLICABLE LEGISLATION:	Local Government Act 1999
MOUNT BARKER 2035 – DISTRICT STRATEGIC PLAN:	Community Wellbeing 2.4 - Work with the community to help it understand and comply with relevant public safety regulations and by-laws.  Economic Prosperity 2.4 - Support small and medium enterprise.  Urban Environment 4.2 - Encourage retail, hospitality and commercial office activities.  Governance and Leadership 2.10 - Ensure compliance with legislative requirements.
RELATED POLICIES:	
SUPPORTING PROCEDURES:	
ENDORSED BY COUNCIL:	15 January 2018
NEXT REVIEW DATE:	January 2019

## 1. POLICY STATEMENT

A mobile food vending business requires a permit under section 222 of the *Local Government Act 1999* to operate a business on a public road in the Council area.

A condition of a permit authorising a mobile food vending business to operate on a public road in the Council area is that the permit holder complies with location rules adopted by the Council under section 225A of the Local Government Act.

Council has adopted the location rules set out in this document.

## 2. POLICY OBJECTIVES

The primary policy objectives of this Policy are to:

- To encourage mobile food vans to operate in our Council area to complement our existing bricks and mortar premises that sell food and beverages.
- Ensure mobile food vans to operate within the Council area in the approved locations.

- To establish location rules which outline the requirements of operating a mobile food van within the Council area.

### 3. DEFINITIONS

**Mobile Food Vendor:** A mobile food vending vehicle is defined as any vehicle, whether mobile or stationary, used for the purpose of selling food and/or drink.

**Vehicle:** The Road Traffic Act 1961 (the RTA) defines a vehicle as:

- a motor vehicle, trailer and a tram;
- a bicycle;
- an animal-drawn vehicle, and an animal that is being ridden or drawing a vehicle;
- a combination;
- a motorised wheelchair that can travel at over 10 kilometres per hour (on level ground), but does not include another kind of wheelchair, a train, or a wheeled recreational device or wheeled toy.

### 4. ROLES & RESPONSIBILITIES

**Council:**

To adopt a policy and ensure appropriate budget is provided to maintain the policy.

**Chief Executive Officer:**

To ensure that sufficient Council resources are available and applied to the policy.

**General Manager:**

To ensure the relevant Manager is responsible for applying and monitoring enforcement activities under the Local Government Act 1999.

**Environmental Health Officers and Public Safety Officers:**

To regulate mobile food vendor activity to ensure compliance with Council's Location Rules, permit conditions and other relevant legislation.

### 5. COUNCIL PRE-APPROVED MOBILE FOOD VENDING BUSINESS SITES

The Council has determined that mobile food businesses may operate from the sites shown within the Mobile Food Vendor Guidelines as listed on Council's website, [www.mountbarker.sa.gov.au](http://www.mountbarker.sa.gov.au).

## 6. MOBILE FOOD VENDING BUSINESS DETERMINED SITES

A mobile food vending business holding a valid permit issued by the Council may operate at any of Council's pre-approved locations, in accordance with Council's Location Rules and permit conditions.

## 7. LOCATION RULES

### a. Operate a reasonable distance from a fixed food business

A mobile food vending business must select a site for operation which allows for a reasonable distance between the mobile food vending business and fixed food businesses during the operating hours of the fixed food businesses.

#### Explanation

A 'fixed food business' is '*a business the primary purpose of which is the retail sale of food or beverages that is carried on at fixed premises*'. Fixed food businesses include cafes, restaurants, delicatessens, takeaway food businesses, bakeries, greengrocers, health food shops, butchers, supermarkets and, in some cases, service stations.

A 'reasonable distance' will depend on the circumstances and may vary from location to location.

A mobile food business must consider the location, number and operating hours of fixed food businesses in the Council area when determining if the location in which the mobile food vending business wants to trade is a reasonable distance from fixed food businesses. Determining a reasonable distance from fixed food businesses requires a balancing of these factors.

A mobile food vending business should have an objective basis for determining that in the circumstances of the location, and considering the location, number and operating hours of fixed food businesses in the Council area, the distance between the fixed food business and the mobile food vending business will be reasonable. Be aware that you may be required to provide an explanation of your reasoning to the Council or the Small Business Commissioner (see 8 below).

### b. Take into account the effect of the operation of the mobile food vending business

#### Location rule

A mobile food vending business must select a site for operation which takes into account the effect of the operation of the mobile food vending business on:

- (a) vehicles and pedestrian traffic, footpaths, driveways, access points to buildings and parking areas for people with disabilities;
- (b) the requirements relating to, and availability of, parking spaces; and
- (c) residents and businesses.

### **Explanation**

A mobile food vending business must operate from a site where it will not cause an obstruction to persons using the public road or interfere with residents living, or businesses operating, in the vicinity of the site.

A site cannot be selected which would breach parking requirements applying to the site. This includes locating the mobile food vending business within spaces reserved for people with disabilities.

### **c. No undue interference with vehicles or road related infrastructure**

#### **Location rule**

A mobile food vending business must select a site for operation where the mobile food vending business will not unduly interfere with:

- (a) vehicles driven on roads;
- (b) vehicles parking or standing on roads;
- (c) a parking area for people with disabilities (within the meaning of rule 203(2) of the *Australian Road Rules*);
- (d) any public transport and cycling infrastructure (including bus zones, taxi zones and bike lanes);
- (e) other road related infrastructure; or
- (f) infrastructure designed to give access to roads, footpaths and buildings.

### **Explanation**

A mobile food vending business must operate from a site which will not impinge on the use of roads by vehicles or interfere unduly with road related infrastructure.

### **d. COMPLIANCE WITH LEGISLATIVE REQUIREMENTS**

#### **Location rule**

A mobile food vending business must select a site for operation which does not breach any relevant requirements under:

- (a) the *Food Act 2001*;
- (b) the *South Australian Public Health Act 2011*;
- (c) the *Environment Protection Act 1993*;
- (d) the *Local Nuisance and Litter Control Act 2016*;
- (e) the *Motor Vehicle Act 1959* and the *Road Traffic Act 1961*;
- (f) legislation relating to electrical or gas installations or appliances; and
- (g) relevant legislation that relates to health, safety or the environment.

### **Explanation**

There are many legislative requirements which apply to the provision of food, the operation of a business and the use of a motor vehicle. A site must be selected by a

mobile food vending business which does not breach any of these important legislative requirements.

## **8. DISPUTES**

If an operator of a food business in the Council area is directly adversely affected by these location rules then the operator may apply to the Small Business Commissioner for a review of the location rules.

## **9. AMENDMENT TO LOCATION RULES**

The location rules may be amended from time to time by the Council. The location rules must be amended by the Council if directed by to so by the Small Business Commissioner or to satisfy a requirement of the Minister for Local Government.

## **10. REVIEW**

This Policy will be reviewed annually or earlier in the event of changes to legislation or related Policies and Procedures or if deemed necessary by the Manager Health and Public Safety.

## **11. ACCESS TO THE POLICY**

The Policy is available for public inspection at the Customer Service Centre, at the Local Government Centre, 6 Dutton Road, Mount Barker, South Australia and on the Council's website [www.mountbarker.sa.gov.au](http://www.mountbarker.sa.gov.au).

## **12. FURTHER INFORMATION**

For further information on this Policy, please contact:

Title: Jamie Tann, Manager Health and Public Safety

Address: PO Box 54, Mount Barker  
South Australia, SA, 5251

Telephone: (08) 8391 7216

Email: [jtann@mountbarker.sa.gov.au](mailto:jtann@mountbarker.sa.gov.au)