

## **Mobile Food Vendor Location Rules**

(adopted pursuant to section 225A of the Local Government Act 1999)

<i>Classification:</i>	<i>Location Rules adopted pursuant to Section 225A of the Local Government Act 1999</i>
<i>Policy Name:</i>	<i>Mobile Food Vendor Location Rules</i>
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<i>Responsible Officer:</i>	<i>Group Manager City Development and Safety</i>

### **1 Introduction**

- 1.1. Pursuant to Section 222 of the Act a person must not use a public road for a business purpose (including the operation a mobile food vending business) without a permit.
- 1.2. Section 222(1a) of the Act requires the Council to grant a permit to authorise a mobile food vending business to operate on a public road. However, pursuant to Regulation 25A(2) of *the Local Government (General) Regulations 2013*, the Council is **not** required to grant a permit for a mobile food vending business *if* the vehicle proposed to be used would unduly obstruct the use of roads in a manner that cannot be adequately addressed by conditions under section 224 of the Act.
- 1.3. These Location Rules are adopted by the Council under section 225A of the Act. The purpose of them is to outline the public roads in the Council's area where a mobile food vending business that has been granted a MFVB Permit may operate. It is the responsibility of the Permit Holder to comply with these Location Rules.
- 1.4. For the avoidance of doubt, these Location Rules apply to the operation of a mobile food vending business on a road only. It is an offence under the Council's Local Government Land By-law to operate a mobile food vending business on Local Government land without permission from the Council. As such, a separate permit will be required where a mobile food vendor wishes to operate on Local Government land.

### **2 Legislation and Policy**

*Local Government Act 1999*

### 3 Definitions

The definitions contained herein are not exhaustive and officers may need to consider the relevant legislation for further applicable definitions.

**Act:** means the *Local Government Act 1999*

**Council:** means the Corporation of the City of Burnside

**Fixed Food business:** means a business the primary purpose of which is the retail sale of food or beverages that is carried on at fixed premises.

**Footpath:** means the part of a street or road between the property boundary of the street or road and the closest edge of the carriageway.

**Local Government Land:** means all land vested in or under the care control and management of the Council except roads.

**Mobile food vending business:** means a business involving the sale of food or beverages from a vehicle (within the meaning of the *Road Traffic Act 1961*).

**MFVB permit:** means a permit issued to authorise a mobile food vending business to operate on a road under Section 222 of the Act.

**Permit holder:** means a person who holds an MFVB permit.

**Road:** has the same meaning as 'public road' under the Act and includes a footpath.

### 4 Location Rules

The Council has determined that a Permit Holder may operate a mobile food vending business from any road located in the Council's area, subject to compliance with these location rules and the conditions attaching to an applicable MFVB permit.

Rules 4.1 – 4.11 (inclusive) are subject to part 5 below.

- 4.1 A mobile food vending business must not operate within 200 metres of a fixed food business that sells any of the same products during such time as the fixed food business is open to the public unless the MFVB permit provides otherwise.
- 4.2 A mobile food vending business must not operate on the side of a road that is directly in front of any residential premises without the written consent of the Council. A mobile food vending business may operate on a residential street if it is parked directly adjacent to local government land.
- 4.3 A mobile food vending business must only operate between 8am and 9pm unless the permit provides otherwise, or with the written permission of the Council.
- 4.4 Food and beverages must not be served from the rear of a vehicle or road side of the vehicle, and may be served only onto a footpath provided there is a clear path of at least 1.2 metres in width for pedestrians.

- 4.5 A mobile food vending business and the vehicle from which it operates must not remain in one location for more than 24 hours regardless of whether the business is operating.
- 4.6 A mobile food vending business must not operate on any road where the speed limit is higher than 60km/h.
- 4.7 A mobile food business must not operate on Portrush Road or the South Eastern Freeway or any associated road related area (such as truck stops and parking areas).
- 4.8 Unless the MFVB permit provides for it, a permit holder must not erect any structures, place any structures or signs (other than a sign in accordance with By-Law 2 – moveable signs) on Local Government Land or a road in connection with a mobile food vending business, without the written permission of the Council.
- 4.9 A Permit Holder must select a location for operating the mobile food business that takes into account the effect of the operation of the mobile food vending business on:
  - 4.9.1 vehicles and pedestrian traffic, footpaths, driveways, access points to buildings and parking areas for people with disabilities; and
  - 4.9.2 residents and businesses in the location and its vicinity.
- 4.10 A Permit Holder must select a location for operating the mobile food business that does not unduly interfere with:
  - 4.10.1 vehicles driven on roads;
  - 4.10.2 vehicles parking or standing on roads;
  - 4.10.3 a parking area for people with a disability (within the meaning of rule 203(2) of the Australian Road Rules);
  - 4.10.4 public transport and cycling infrastructure (including bus zones, taxi zones, and bicycle lanes); and
  - 4.10.5 infrastructure designed to give access to roads, footpaths and buildings, and any other road related infrastructure.
  - 4.10.6 Residential Amenity
- 4.11 A Permit Holder must select a site for operation that does not result in a breach of any of the following:
  - Australian Road Rules*
  - Food Act 2001*
  - South Australian Public Health Act 2011*
  - Environment Protection Act 1993*

*Local Nuisance and Litter Control Act 2016*

*Motor Vehicles Act 1959 or the Road Traffic Act 1961 and*

*Any other relevant legislation*

## **5 Exemptions from Certain Rules**

- 5.1 In issuing a permit, the Council may provide the Permit Holder with an exemption from one or more of rules 4.1 – 4.7. If an exemption is provided for a rule, the Permit Holder will not be taken to be operating contrary to that rule provided that the Permit Holder is otherwise operating in compliance with the conditions attaching to the MFVB permit.
- 5.2 The MFVB permit will specify if any exemption has been provided pursuant to this part and if so, the rule (or rules) in respect of which the exemption applies.
- 5.3 In determining whether or not an exemption is appropriate, the Council will have regard to the circumstances in question, including (but not limited to):
  - 5.3.1 the nature of the mobile food vending business subject of the application and the proposal for its operation;
  - 5.3.2 any relevant history of the food business operating in another council area;
  - 5.3.3 whether there are any extenuating circumstances;
  - 5.3.4 the number of mobile food vending businesses that are permitted to operate in the Council's area at any one time;
  - 5.3.5 whether or not the mobile food vending business is linked to a fixed food business;
  - 5.3.6 the degree of community support for the mobile food vending business (if known);
  - 5.3.7 the impact of the exemption upon a fixed food business (if any); and
  - 5.3.8 any other matters the Council considers relevant.

## **6 Objection to Location Rules**

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

## **7 Amendment of the Location Rules**

The Council may amend these Location Rules from time to time and must amend them if directed to do so by the Small Business Commission or to satisfy a requirement of the Minister for Local Government.