

Guidelines for mobile food vending on public roads

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1. Introduction

The City of West Torrens recognises that trading from a mobile food vending business can improve services to residents and workers away from main shopping areas. Mobile food vending can also add a pedestrian-friendly feel to an area, improving public safety and bringing a festive atmosphere to local streets.

Council encourages mobile vending of food and beverages within West Torrens to increase overall community enjoyment of the city. While supporting the practice of mobile food vending businesses, Council also recognises the need for appropriate procedures and guidelines for these activities.

2. Statutory requirements

2.1 *Local Government Act, 1999*

- Under Section 222 of the *Local Government Act 1999* a person must not use a public road for business purposes unless authorised to do so by a permit.
- Under Section 222(1a) Council is required to grant a permit for the purpose of a mobile food vending business.
- Under Section 224 Council may attach conditions to a permit issued for a mobile food vending business including, as necessary, to protect the Council's interests. However, any such conditions must be consistent with the 'location rules' and any regulatory requirements.
- Under Section 224A Council may expiate or prosecute a person who has failed to comply with a permit issued. An expiation fee of \$210 and maximum penalty of \$2,500 will apply to this offence.
- Under Section 225 a mobile food vendor business permit cannot be cancelled for a breach of a condition unless Council is satisfied that the breach is 'sufficiently serious to justify cancellation of the permit'. If Council cancels a mobile food vending business permit, then the permit holder will be prevented from reapplying for a new permit for a period of time specified by the council (not exceeding six months).
- Under Section 225A Council will adopt location rules that establish where, within the council area, mobile food vending businesses may operate. The location rules must comply with any requirements prescribed by regulation.
- Under Section 225B an aggrieved 'bricks and mortar' business that is directly adversely affected by the location rules is given a right of review against the rules to the Small Business Commissioner.

2.2 *Environment Protection Act 1993*

Section 25 of the *Environment Protection Act 1993* imposes the general environmental duty on all persons undertaking an activity that might cause pollution, to take all reasonable and practical measures to prevent or minimise the resultant environmental harm.

3. Definitions

- 'Council' includes Council members, employees and agents.
- 'Applicant' means all persons named in the application form for a permit, all of whom will be bound by the conditions of the permit.
- '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*). These could include (but not restricted to) mobile coffee vans, cafe or lunch vans. It does not include stationary vehicles that park in a permanent spot on the road such as mobile diners, pie carts or fruit and vegetable carts.
- 'Mobile vending' or trading means the preparation, packaging, serving and sale of items from a mobile food vending business where the particular item is sold to buyers from the vehicle itself. This may include food items such as coffee, confections or sandwiches.
- 'Permit' means a permit for the operation of a mobile food vending business within West Torrens.

- 'Road' extends from the property boundary to property boundary and includes the carriageway, footpaths and verges owned or under care and control of Council.

4. The permit

4.1 The Permit

A permit for mobile vending entitles the permit holder to trade on council roads from a mobile food vending business. No person is allowed trade form a mobile food vending business without such a permit.

Generally, permits will be issued for the sale of low risk food or beverages although other food and beverages are considered.

A mobile vending permit will be:

- issued in the name of the applicant
- transferable at Council discretion
- valid to only operate between the hours of 9am and either sunset or 8.30pm, whichever is earlier. Operating outside of these hours is prohibited unless written permission has been given by Council.
- valid within the Council area subject to complying within the location rules.
- valid only for the activity described on the permit
- subject to fees and charges set out in the City of West Torrens Fees and Charges Schedule, as endorsed by Council
- subject to the conditions set out in these guidelines
- subject to any other directions made by Council.

Permits do not allow parking contrary to the Australian Road Rules.

Permits do not allow sales upon a reserve, foreshore, park or adjacent car park or land. (This clause does not apply if a permit holder is an official vendor or stallholder of an event for which approval has been given.) However, nothing in these guidelines prohibits mobile food vendors participating in special events, such as sporting events, markets or street festivals.

Council reserves the right to issue expiation fees to mobile food vending businesses that breach a condition of a permit under Section 222.

Council reserves the right to cancel or suspend a permit when a serious breach has occurred which will prohibit the person who held the permit, or a person applying on behalf of the person who held the permit, to apply for a new permit for a period not exceeding six months.

4.2 Permit applications

An application for a permit will be made on the approved Council application form.

Applications will be accompanied with documentation to enable Council to assess whether the conditions of issue have been met. This documentation is specified at Section 7.

Permits will be issued for the requested period (i.e. monthly or annually).

4.3 Activation of a permit

The permit will not commence to operate and no mobile vending will commence until:

- all approvals have been granted (including relevant food safety approvals)
- payment is received of all fees (including payment of a transfer fee where a transfer of the approval is requested)
- a Certificate of Currency showing the required level of public liability insurance is returned to the Council endorsed by the permit holder's insurer.

4.4 Permit holder responsibilities

The permit holder is to ensure that the mobile vending authorised by the permit is undertaken in accordance with details accompanying the application, complies with the conditions of these guidelines and with Council policy and by-laws.

Permit holders will be responsible for meeting the following standard conditions for the term of a permit:

- To comply with all applicable industry standards, health or safety standards, current standards of Standards Australia or any applicable codes of practice.
- To comply with relevant Council By-laws, Policy and with the Guidelines for Mobile Vending on Public Roads.
- To comply with state and federal legislation. The issue of the permit does not absolve the permit holder or their agents from any overriding legislation.
- To indemnify and to keep indemnified the Council its employees, servants and agents and each of them from and against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or

made or claimed against them or any of them arising out of or in relation to the issuing and granting of the permit.

- To maintain a current public risk insurance policy in the name of the permit holder insuring the permit holder for the minimum sum of TWENTY MILLION DOLLARS (\$20,000,000) in the terms set out below.
- To accept total responsibility to make good any damage that occurs to Council roads or to public infrastructure as a result of the operation of a mobile food vending business by the permit holder.
- To provide proof, upon the request of Council, of current public liability insurance at any time.
- To not assign or otherwise transfer a permit without first obtaining the consent of the Council in writing.
- To notify Council and obtain prior approval for any changes to the approved activity contained in the permit. (Changes to the activity may cause conditions to the permit to be altered. If this is the case a new permit will be issued).
- To notify Council of any serious breach.
- To notify Council within 14 days of any changes to circumstances that would affect the validity of the permit (e.g. change of ownership of a company).
- To make the permit available for inspection upon request by an authorised officer or police officer.
- Make available to an authorised officer a valid food business notification showing the operator's Food Business Number (FBN).
- To ensure that the operation of their business does not cause a nuisance or impact adversely on community amenity, environmental health, the safety of pedestrians and other road users or cause a nuisance to residents where the vehicle is temporarily parked.

In the event that the permit holder has failed to comply with any of the conditions of the permit or for any other justifiable circumstance, the Council may revoke the permit or issue an expiation, depending on the severity of the breach.

A permit does not confer on the permit holder any exclusive right, entitlement or interest in the road (unless specifically provided pursuant to Section 223 of the *Local Government Act, 1999*) and does not derogate from the Council's powers arising under the Act.

Insurance

The permit holder will agree to indemnify and to keep indemnified the Council, its employees, servants and agents and each of them from and against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against them or any of them arising out of or in relation to the issuing and granting of the permit.

Notwithstanding the above, the permit holder shall not be rendered liable for personal injury to or the death of any person or loss of or damage to any property resulting from any breach by the Council of any provision of this permit or any negligent act or omission of the Council or its employees, servants and agents.

The permit holder will maintain a current public risk insurance policy in the name of the permit holder insuring the permit holder for the minimum sum of TWENTY MILLION DOLLARS (\$20,000,000) against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against the permit holder in relation to the activity.

The permit holder will provide confirmation of insurance to Council in the form of a Certificate of Currency. Such a certificate will bear the endorsement of the Insurer indicating that the Insurer accepts the indemnity given by the permit holder and any excess payable for each claim.

The permit holder, where appropriate, will ensure that it is licensed or registered to carry out the activity authorised by the issuing of this permit.

The permit will become immediately invalid if the permit holder ceases to have current public liability insurance as set out above.

5. Special conditions of permits

The name and address of the permit holder will be displayed on the vehicle and be clearly visible to onlookers.

A copy of the permit will be displayed in the vehicle.

The issue of a permit will not exempt the mobile vendor/driver from any provisions of the Road Traffic Act or Australian Road Rules regarding the stopping or parking of the vehicle.

No mobile food vending business will be parked in such a way or the business of street trading conducted in such a way that the free flow of traffic is hindered or that a dangerous or hazardous situation is created. Operators will apply due diligence towards the safety of approaching patrons, in particular, to consider safe stopping locations.

A condition of permits will be that the mobile food vending businesses operating on a public road in the Council area must comply with location rules adopted by the Council.

The proposed regulations do not affect obligations under various other Acts, including the *Food Act 2001* and the *Road Traffic Act 1961*.

The permit conditions may be amended at any time by Council. Permit holders will be notified in writing of the changes.

Council may add or remove directions in addition to conditions at any time. Failure to comply with directions will be taken as failing to comply with a condition of the permit.

6. Location

- 6.1 Mobile food vending businesses shall not be permitted to park within 200m of a fixed food business while they are operating.
- 6.2 Mobile food vending businesses shall not be permitted to park within 30m of an intersection (without signalised traffic lights).
- 6.3 Mobile food vending businesses shall not be permitted to park within 50m of a signalised intersection.
- 6.4 Mobile food vending businesses shall not be permitted to park within 15m of a residence unless otherwise approved.
- 6.5 Mobile food vending businesses shall not be permitted to park within 10m of a car park entrance/egress points.
- 6.6 Mobile food vending businesses shall not be permitted to park within 10m of a crest or bend of a road.
- 6.7 Must not park their vehicles in areas where parking is restricted to less than 1 hour. Once mobile food vending businesses have exceeded a timed parking restriction they may not attend the same location within a 24 hour period.
- 6.8 May not cause undue interference or obstruction to persons using the public road, residents or businesses.
- 6.9 Must not obstruct vehicles and pedestrian traffic, footpaths, driveways, access points to buildings and parking areas for people with disabilities.
- 6.10 Must adhere to parking rules / restrictions and only park within designated parking zones.
- 6.11 Are required to park their vehicle parallel to the kerb with trading and service only to occur on the kerb side.
- 6.12 Footpath must have clear access for people with disabilities in accordance with the *Disability Discrimination Act 1992*.
- 6.13 Ensure that no more than two (2) parking bays are used for a mobile food vending vehicle including a tow vehicle.
- 6.14 Must not operate on a road with a speed limit greater than 60 km/h.
- 6.15 Must not operate on the shoulder of a road without designated parking unless otherwise approved in writing.
- 6.16 Must not operate on a road with verge widths of less than 2.8 metres.
- 6.17 Must not operate from a Department of Planning, Transport and Infrastructure South Australian road.

7. Documents to be submitted to Council

Applications for permits will be accompanied with documentation to enable Council to assess whether the conditions of issue have been met. This documentation will include:

- Certificate of Currency of public liability insurance, as specified in 4.4 above.
- a route plan listing the streets or areas of the city that will be visited
- information on any audible or visual devices that are proposed as a means of attracting customers
- a copy of Food Business Notification, showing the operator's Food Business Number (FBN), from the council where the majority of the food preparation and handling is occurring
- Mobile Food Vendor Passport (if issued).

8. Compliance

8.1 Monitoring

Authorised Officers (of Council) will monitor mobile vending activities and operators are required to comply with any direction provided by such officer.

8.2 Operation of a mobile food vending business without a permit

Where a mobile food vending business operates within the City without a permit, Council will require the business owner or employee to cease such operations. Failure to do so may result in the issue of an expiation notice.

Operators will ensure that permits are renewed promptly to avoid such action being taken.

