



# MOBILE FOOD VENDOR GUIDELINES



CITY OF  
**TEA TREE GULLY**  
*Naturally Better*

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## 1. Introduction

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*.

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

## 2. Mobile food vending business determined sites

A mobile food vending business holding a permit issued by the Council may operate anywhere in the Council area, subject to complying with these location rules and any other requirements of the permit.

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

#### Location rule

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 3 below).

#### Examples

Where there is a large number of fixed food businesses in a small geographic area then the reasonable distance from these fixed food businesses may be less than in other circumstances on the basis that there is already active competition between multiple food businesses in the location.

Where a mobile food vending business wants to trade outside of the central operating hours of a fixed food business then the reasonable distance may be less (eg a mobile food vending business trading from late afternoon in the vicinity of a bakery).

## **2.2. 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.

### **Examples**

A site should not be selected:

- if the mobile food vending business would take up all, or a significant amount of, the parking available to other businesses
- where footpaths are narrow so that the mobile food vending business and its customers may cause an obstruction to other persons using the footpaths
- if the mobile food vending business would obscure a pedestrian or driver's view of a road in an unsafe manner.

## **2.3. 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) 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.

### **Examples**

A site should not be selected if the mobile food vending business would interfere with access by a disabled person to a parking area for persons with disabilities.

Lengths of road with high public transport usage would not be suitable if the mobile food vending business was located so as to impede vehicle operations or passenger access (eg a bus interchange located on a road).

A site which restricts or interferes with access to facilities for parking bicycles would also not be suitable.

## **2.4. 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 relating 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 legislative requirements.

### **Examples**

A mobile food vending business must comply with the *Work Health and Safety Act 2012* (WHS Act). Consideration should be given to the 'primary duty of care' under the WHS Act which is, so far as reasonably practicable, to ensure to health and safety of workers when selecting a site.

A mobile food vending business must not commit a 'local nuisance' under the *Local Nuisance and Litter Control Act*. A local nuisance includes any adverse effect on the amenity value of an area

that is caused by noise, odour, smoke, fumes, aerosols or dust which unreasonably interferes with, or is likely to interfere unreasonably with, the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area. A mobile food vending business which omits smoke or odours should consider these requirements when selecting a site.

### **3. Disputes may be referred to the Small Business Commissioner**

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.

### **4. Amendment of these 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.