

## Mobile Food Vendor Policy

<b>Date</b>	November 2020
<b>Council Resolution Date</b>	7 December 2020
<b>Clause Number</b>	CCL20/220
<b>Responsible Position</b>	Environment and Health Services Team Leader
<b>Branch</b>	Environmental Compliance
<b>Division</b>	Development and Environment
<b>Version</b>	One
<b>TRIM Reference Number</b>	ED21/1918
<b>Review Period</b>	Every two (2) years
<b>Review Date</b>	November 2022
<b>Consultation</b>	Public consultation (from/to dates)

Document Revision History	
Description	Date
<b>Notes</b>	

# POLICY

## 1. PURPOSE

1.1 The purpose of the Mobile Food Vendor Policy is to provide a clear and concise Policy for the management of all Mobile Food Vendor Vehicles operating or intending to operate within the Dubbo Regional Council Local Government Area (LGA).

1.2 The principal goals of the Mobile Food Vendor Policy are to:

- Outline the requirements for the administration of Mobile Food Vendor Vehicle registration and approval to operate with the Dubbo Regional Council.
- Detail the processes that need to occur in order to obtain approval from Council
- Ensure that the construction, fit out and operation of the Mobile Food Vendor Vehicle are appropriate for the safe storage, preparation, handling and sale of food.
- Minimise risk to the public from Mobile Food Vendor Vehicles.

1.3 This policy does not apply to street stalls or roadside stalls. Roadside stalls are not permitted in the Dubbo Regional Council LGA.

## 2. BACKGROUND AND RELATED LEGISLATION

2.1 Under the provisions of the *Food Act 2003*, and the Food Regulation Partnership with the NSW Food Authority, Council is the relevant enforcement agency for the retail sale of food from all premises (except butchers) within the LGA, including Mobile Food Vendor Vehicles.

2.2 This policy has been developed to supplement the relevant legislation that governs mobile food vending including provisions of the;

- *Local Government Act 1993,*
- *The Local Government (General) Regulation 2005,*
- *Food Act 2003,*
- *Food Regulation 2015,*
- *Australian Food Standards Code,*
- *Protection of the Environment Operations Act 1997,*
- *Road Transport (Vehicle Registration) Regulation 2017,*
- *Roads Act 1993;*
- *Road Transport (General) Act 2013.*

## 3. SCOPE

3.1 This policy applies to all proprietors selling food through a Mobile Food Vendor Vehicle within Dubbo Regional Council LGA.

3.2 This policy does not apply to any Mobile Food Vendor Vehicles operating with a Development Consent or under the provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

In accordance with the *Food Act 2003*, all Food Businesses (including Mobile Food Vendor Vehicles) are required to notify their activity to the local authority (Council). In addition, under the provisions of the *Local Government Act 1993*, an approval is required to engage in trade or business on Public Land and use a standing vehicle or any article for the purpose of selling any article in a Public Place. This Policy combines the notification and approval process.

#### 4. DEFINITIONS

To assist in interpretation, the following definitions apply:

Term	Definition
Mobile Food Vendor Vehicle	A Mobile Food Vendor Vehicle is any vehicle, including but not limited to a truck, van, trailer or scooter used for the retail sale of food, direct to the consumer on a public roadway. It does not include a food transport vehicle used to deliver food from a fixed food business to the consumer.
Food	<p>Includes:</p> <ul style="list-style-type: none"> <li>a) Any substance or thing of a kind used, or represented as being for use, for human consumption ( whether it is live, raw, prepared or partly prepared) or</li> <li>b) Any substance or thing of a kind used, represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a), or</li> <li>c) Any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing), if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid, or</li> <li>d) Chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum, or</li> <li>e) Any substance or thing declared to be a food under a declaration in force under section 6 of the food standards Australia New Zealand Act 1991 of the Commonwealth, whether the substance, thing or chewing gum is in a condition fit for human consumption.</li> </ul> <p>However, food does not include a therapeutic good within the meaning of the Therapeutic Goods Act 1989.</p> <p>To avoid doubt, food may include live animals and plants.</p>
Food business	<p>Means a business, enterprise or activity that involves:</p> <ul style="list-style-type: none"> <li>a) the handling of food intended for sale, or</li> <li>b) the sale of food,</li> </ul> <p>regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.</p>
Sell	<p>Means to:</p> <ul style="list-style-type: none"> <li>a) Barter, offer or attempt to sell, or</li> <li>b) Receive for sale, or</li> <li>c) Have in possession for sale, or</li> <li>d) Display for sale, or</li> <li>e) Cause or permit to be sold or offered for sale, or</li> <li>f) Send, forward for deliver for sale, or</li> <li>g) Dispose of by any method for valuable consideration, or</li> <li>h) Dispose of to an agent for sale on consignment, or</li> <li>i) Provide under a contract of service, or</li> <li>j) Supply food as a meal or part of a meal to an employee, in</li> </ul>

	<p>accordance with a term of an award governing the employment of the employee of a term of the employee's contract of service, for consumption by the employee at the employee's place of work, or</p> <p>k) Dispose of by way of raffle, lottery, or other game of chance or</p> <p>l) Offers as a prize or reward, or</p> <p>m) Give away for the purpose of advertising or in furtherance of trade or business, or</p> <p>n) Supply food under contract ( whether the contract is made with the consumer of the food), together with accommodation, service, or entertainment, in consideration of an include charge for the food supplied and the accommodation, service or entertainment, or</p> <p>o) Supply food in the course of providing services to patients in public hospitals or inmates in correctional centres, or</p> <p>p) Sell food for the purpose of resale.</p>
Public Place	<p>a) A public reserve, public bathing reserve, public baths or public swimming pool, or</p> <p>b) A public road, public bridge, public wharf, or public road-ferry, or</p> <p>c) A Crown reserve comprising land reserved for future public requirements, or</p> <p>d) Public land or Crown land that is not:</p> <ol style="list-style-type: none"> <li>I. A Crown reserve (other than a Crown reserve that is a public place because of paragraph (a) (b) (c) or</li> <li>II. A common, or</li> <li>III. Land subject to the Trustee of Schools of Art Enabling Act 1902, or</li> <li>IV. Land that has been sold or leased or lawfully contracted to be sold or leased, or</li> </ol> <p>e) Land that is declared by the regulations to be a public place for the purposes of this definition.</p>
Public Land	Means land that is classified as community or operational land under <i>Division1 of Part 2 of Chapter6 of the Local Government Act 1993.</i>

## 5. GENERAL REQUIREMENTS

### 5.1 Design and Construction Requirements

Mobile Food Vendor Vehicles must be designed, constructed and fitted out in accordance with:

- NSW Food Authority's "Guidelines for Mobile Food Vendor Vehicles",
- *Food Act 2003 and Food Regulation 2015*
- Food Safety Standards – Australian Food Standards Code.
- Due to the implications of Covid 19 mobile food vans need to undertake Covid safe practices such as ensuring social distancing of patrons.

## **5.2 Use of Separate Premises**

### **5.2.1**

Food preparation at home or any other premises for the purpose of selling from a Mobile Food Vehicle may require development approval. Contact Council's Duty Planner for further information.

### **5.2.2**

Any separate premises must comply with the *Food Act 2003*, the Food Safety Standards and AS4674 - Design, construction and fit out of food premises.

## **5.3 Fees and Charges**

Application and inspection fees will be charged in accordance with Council's adopted fees and charges, revised each financial year. Applications will not be accepted without payment of the applicable fee.

## **5.4 Refunds**

### **5.4.1**

There will be no refunds of annual application and inspection fees, except as detailed in 5.4.2 below.

### **5.4.2**

The Manager of Councils Environment and Compliance Branch may consider a request for a refund of fees in extenuating circumstances. Requests shall be made in writing and will be assessed on individual merit.

## **5.5 Insurance**

An Application for Approval to operate as an Itinerant Food Vendor must include a copy of the operator's current public and product liability insurance. The operator must maintain an insurance policy in respect to public and product liability to a combine total of not less than \$20 million for any one occurrence and in the aggregate.

## **5.6 Non-Compliance**

If Council becomes aware that a condition of an Approval has not been complied with, it may modify or revoke the approval and/or require remedial action to be undertaken.

In the event that a proprietor of a Mobile Food Vendor Vehicle does not comply with the requirements of this policy, the *Food Act 2003*, Food Standards Code or any other relevant legislation, code, standard or policy, Council's Authorised Officers may initiate appropriate regulatory action in accordance with Council's Compliance and Enforcement Policy.

## **6 APPROVALS**

**6.1** Operators of a Mobile Food Vendor Vehicle trading on the road or in a public place must apply and receive Approval to operate as a Mobile Food Vendor before operating in the Local Government Area. The Approval is required to use a standing vehicle or any article for the purpose of selling any article in a Public Place, in accordance with *section 68 of the Local Government Act 1993*. For the

purposes of this policy, a standing vehicle includes any Mobile Food Vendor Vehicle, which has stopped on a public roadway to make a sale, or with the intention to sell food.

**6.2** Mobile Food Vendor Vehicle operators should seek information from the Road and Maritime Services (RMS) for their driver and vehicle licences and registration requirements.

## **7 APPLICATION PROCESS**

An application for a Mobile Food Vendor Vehicle trading approval must be submitted annually.

An application for Approval must include:

- A completed application for Approval to Sell Food in a Public Place from a Vehicle or Article form (see attachment).
- Payment of relevant fees.
- A copy of the Mobile Food Vendor Vehicle operator's current public and product liability insurance. The operator must maintain an insurance policy in respect to public and product liability to a combined total of not less than \$20 million for any one occurrence and in the aggregate.

## **8 INSPECTION FOR APPROVAL**

**8.1** Prior to the issue of Approval to Operate as an Itinerant Vendor, the Mobile Food Vendor Vehicle must be presented for inspection each year.

**8.2** A prior appointment must be made with Council's Environmental Health Officers for any inspections.

**8.3** Following a satisfactory Council inspection a written Approval to Operate as an Itinerant Vendor will be issued. The operator is to operate the vehicle in accordance with the conditions of the approval at all times.

## **9 OPERATIONAL INSPECTIONS**

In accordance with the *Food Act 2003 and Food Regulation 2015*, Council's Authorised Officers may inspect vehicles at any time during operation.

## **10 OPERATION OF A MOBILE FOOD VENDOR VEHICLE**

### **10.1 Noise**

Chimes or like devices used to attract attention shall not be used between the hours of 8 pm to 8 am nor shall be used within 90 metres from any hospital, schools during school hours or churches during service times.

The operation of the Mobile Food Vendor Vehicle shall not give rise to offensive noise within the meaning of the *Protection of the Environment Operations Act 1997*.

### **10.2 Operating Areas**

#### **10.2.1**

The Mobile Food Vendor Vehicle activity must not be carried out on any classified road as defined by the Road Acts 1993 (i.e freeways, highways, state works etc.).

### 10.2.2

The Mobile Food Vendor Vehicle or article shall not be operated within 100 metres of a retail food premise open for trade and 100 metres of any licensed premises. The distance relates to the boundary of the allotment(s) upon which the subject premises is located.

### 10.2.3

Mobile Food Vending can be carried out for a maximum of 30 minutes at any one position (unless continuously serving or requested by an authorised officer to leave the area). After stopping to vend the vending vehicle must drive a minimum of 100 metres before again stopping to vend.

### 10.2.4

Mobile Food Vendor Vehicles must obey all Road Rules including parking restrictions under the *Roads Act 1993, Road Transport (General) Act 2013 and Local Government Act 1993*.

## 10.3 Warning Lights

*The Road Transport (Vehicle Registration) Regulation 2017* requires street vending vehicles such as ice cream vans and other food vans must display a flashing amber light while stopped for the purpose of serving customers. The light must start flashing within one second of being switched on and flash at a rate not less than 60 times per minute.

## RESPONSIBILITIES

This Policy is to be enacted by Environmental Control officers who are authorised under the;

- *Local Government Act 1993, the Local Government (General) Regulation 2005,*
- *Food Act 2003,*
- *Food Regulation 2015,*
- *Australian Food Standards Code,*
- *Protection of the Environment Operations Act 1997.*

## APPENDICES

### Appendix A – Application for Approval to Sell Food in a Public Place from a Vehicle or Article