

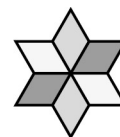
Mobile Food Vendor Permit

Under sections 200 / 202 / 221 / 222 of the *Local Government Act 1999*.

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City of
**Norwood
Payneham
& St Peters**

Conditions

BETWEEN The Corporation of the City of Norwood Payneham and St Peters of 175 The Parade Norwood SA 5067 (**Council**)

AND

The **Permit Holder** as described in Item 1 of the Schedule.

TERMS

1. DEFINITIONS

In this Permit:

Act means the *Local Government Act 1999* (SA) and includes the Act as substituted, modified, repealed, replaced and includes all by laws, regulations and rules issued under it.

Business Activity means the use described in Item 5.

Commencement Date means the date stated as the Commencement Date in Item 3 or such other date as the Council notifies the Permit Holder.

Council means the party described as the "Council" in this Permit and where the context permits includes the employees, contractors, agents and other invitees of the Council.

Council's Equipment means all fixtures and fittings, plant, equipment, services, chattels and other goods installed or situated in or on the Location and made available for use by the Permit Holder (if any).

Fee means the fee set out in Item 3(a) or (b).

Location means that portion of the public road or the Council land described in Item 2(a) or (b) and includes any part of the road or Council land (as relevant) and the Council's Equipment.

Legislation includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority, including the Council in its separate capacity as a local government authority.

Location Rules means the Location Rules contained within the Council's Mobile Food Vendor Guidelines (as amended from time to time).

Mobile Food Vendor Permit applies when this Permit is granted in relation to a 'Mobile Food Vendor Business' as defined in the Act.

Mobile Food Vendor Site means a location designated as a Mobile Food Vendor Site in the Council's Mobile Food Vendor Guidelines (as amended from time to time).

Permit Holder means the party described in Item 1 and where the context permits includes the employees, contractors, agents, authorised representatives, customers and other invitees of the Permit Holder.

Permit Holder's Equipment means any and all fixtures and fittings and other equipment installed in or brought on to or kept at the Location by the Permit Holder (including, without limitation, any moveable signs, canopy, rubbish bins, bollards with bunting or ropes, witches hats, or other advertising).

Regulations mean the *Local Government (General) Regulations 2013*.

Special Conditions means the Special Conditions (if any) attached to this Permit by the Council.

Statutory Requirements means all relevant and applicable Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation.

Term means the term of this Permit described in Item 3(a) or (b) and commencing on the Commencement Date and any period during which the Permit Holder holds over or remains in occupation of the Location.

Times of Operation means the times set out in Item 4 (if any).

2. MOBILE FOOD VENDOR PERMIT

2.1 If this Permit is a Mobile Food Vendor Permit:

2.1.1 this Permit will be subject to all applicable provisions of the Act and the Regulations that relate to the Mobile Food Vending Business (as defined in the Act) and to the extent of any inconsistency between the Act or the Regulations and this permit, the Act or the Regulations prevail;

2.1.2 that is located within a Mobile Food Vendor Site, then the Location Rules form part of this Permit and the Permit Holder must comply with the applicable Location Rules, including site-specific conditions of operation for each Mobile Food Vendor Site (as set out in the Mobile Food Vendor Guidelines), as if they were set out in the Permit expressly

2.1.3 to the extent of any inconsistency between this Permit and the Location Rules, the Location Rules prevail;

2.1.4 the Permit Holder acknowledges that the Act, Regulations, Location Rules and Mobile Food Vendor Sites may be subject to change during the Term. Any change does not prejudice the Permit Holder's obligations under clause 2.1.1 - 2.1.3 (inclusive); and

2.1.5 if at any time during the Term the Act, Regulations, Location Rules or Mobile Food Vendor Sites change, the Council reserves the right to cancel the Permit immediately by notice to the Permit Holder.

3. GRANT OF PERMIT

3.1 The Council:

3.1.1 to the extent that the Location is community land within the Council's area – approves and grants a licence to the Permit Holder under section 200 and section 202 of the Act to use the Location for the Business Activity; and

3.1.2 to the extent the Location is Council owned road – grants a permit to the Permit Holder under section 222 of the Act to use the Location for the business Activity; and

3.1.3 to the extent the Location is Council owned road and to the extent that this Permit authorises an alteration being made as defined in section 221 of the Act – grants an authorisation under section 221 of the Act.

- 3.2 The Permit Holder must only operate at the Location identified in Item 2 and, where the Location is a Mobile Food Vendor Site, the Permit Holder must notify the Council if it intends to operate at a different Mobile Food Vendor Site or to alter its days or hours of operation, prior to doing so.
- 3.3 The Permit Holder may only use the Location for the Business Activity for the duration of the Term and during the Times of Operation (where relevant).
- 3.4 The rights conferred by this Permit are (where relevant) conferred by force of the Act. This Permit does not confer upon the Permit Holder any exclusive right, entitlement or proprietary interest in the road or Council land comprising the Location.
- 3.5 Where the Location is a Mobile Food Vendor Site, this Permit does not confer on the Permit Holder any right to exclusive use of the Mobile Food Vendor Site.

4. FEE

- 4.1 The Permit Holder must pay to the Council the Fee set out in Item 3 upon application to the Council for this Permit.
- 4.2 Payment of the Fee is required in full and no amount of the Fee is refundable, regardless of how frequently the Permit Holder uses the Location, or the number of Mobile Food Vendor Sites used, during the Term.

5. USE OF LOCATION

5.1 Business Activity

- 5.1.1 Subject to clause 5.1.2, the Permit Holder must use the Location strictly only for the Business Activity and must not use or allow the Location to be used for any other use (without the Council's permission);
- 5.1.2 If this Permit is a Mobile Food Vendor Permit then nothing in this Permit, including the description of the Business Activity, prohibits or restricts the sale of any kind of food by the Permit Holder.

5.2 Offensive Activities

- 5.2.1 Notwithstanding clause 5.1, the Permit Holder must not cause or permit any offensive or dangerous activities or behaviour on or from the Location or create, cause or permit a nuisance or disturbance to Council, the public or other owners or occupiers of nearby land.
- 5.2.2 The Permit Holder must ensure at all times that all activities conducted on or from the Location will not discredit the Council.

5.3 Cleaning

The Permit Holder must keep the Location clean, tidy and free from rubbish, and suitable receptacles must be provided by the Permit Holder for deposit of waste and rubbish.

5.4 Advertising

The Permit Holder must not offer to sell goods, solicit, attempt to attract trade or business, tout or spruik on the Location or any area owned or controlled by the Council surrounding the Location, other than directly related to the Business Activity.

5.5 Alcohol

Unless the Permit Holder first obtains a valid liquor licence under the *Liquor Licensing Act 1997* over the Location, and obtains prior Council approval (which may be withheld

at the Council's absolute discretion), the Permit Holder must not permit the consumption of alcohol on or from the Location.

5.6 **Signs**

The Permit Holder must not place any signs or advertisements on the Location, unless approved by the Council.

5.7 **Comply with Directions**

The Permit Holder must comply with all reasonable directions given to the Permit Holder by any employee or officer of the Council in relation to this Permit or the Business Activity.

5.8 **Council Events**

5.8.1 The Permit Holder acknowledges and agrees that if the Location is being used for another organised purpose (**Event**), which has been approved or authorised by the Council and notified to the Permit Holder in advance, the Permit Holder will cooperate with the organisers of the Event and the Council and will, if required, cease operation of the Business Activity at the Location for the duration of the Event, and may relocate to another location or Mobile Food Vendor Site, if available and subject to the Council's consent.

5.8.2 The Permit Holder acknowledges and agrees that the Council will not be liable for any claims or costs suffered by the Permit Holder due to any disruption of the Business Activity by any actions of the Council, including authorising or approving the Event.

6. PERMIT HOLDER'S EQUIPMENT, MAINTENANCE AND REMOVAL

6.1 Any Permit Holder's Equipment installed in or brought on to or kept at the Location by the Permit Holder under this Permit is subject to prior Council approval.

6.2 Where the Location is a Mobile Food Vendor Site, any Permit Holder's Equipment installed in or brought onto or kept at the Location by the Permit Holder must comply in all respects with the Council's Location Rules.

6.3 The Permit Holder must, at its own cost and expense during the Term, maintain the Permit Holder's Equipment and keep the Permit Holder's Equipment in good, safe and proper repair and condition to the Council's satisfaction.

6.4 The Permit Holder must remove any Permit Holder's Equipment installed in or brought on to or kept at the Location upon ceasing trade at the Location each day and upon the expiration or earlier determination of this Permit.

6.5 Any Permit Holder's Equipment that is not removed from the Location in accordance with clause 6.4 may be subject to removal by the Council at the Permit Holder's Cost, recoverable as a debt.

6.6 Except to the extent expressly permitted under another provisions of this Permit, the Permit Holder must not carry out any alterations or additions to the Location without Council's prior written approval and, if necessary, authorisation pursuant to section 221 of the Act (**Alterations**).

7. STATUTORY REQUIREMENTS

7.1 The Permit Holder must, at all times during the Term, comply with:

7.1.1 all Statutory Requirements (including if this Permit is a Mobile Food Vendor Permit, all Statutory Requirements set out in Regulation 25A(1)(c)(iii) from time to time, and any obligations under the Work, Health and Safety Act 2012,

the Local Government Act 1999, the Development Act 1993 and the Liquor Licensing Act 1997); and

7.1.2 all applicable Australian Standards, construction industry or public health standards.

7.2 The Permit Holder must, prior to using the Location for the Business Activity, obtain all required permits, consents, approvals, certificates and any other authorisations which may be required by a Statutory Authority or pursuant to any Statutory Requirement (including under section 221 of the Act for any alteration or addition to the road) and provide copies of the same to the Council.

8. INSURANCE

8.1 Permit Holder Must Insure

8.1.1 The Permit Holder must keep current at all times during the Term:

8.1.1.1 public risk insurance for at least the amount in Item 7 (or any other amount the Council reasonably requires) for each claim; and

8.1.1.2 other insurances required by any Statutory Requirement and which the Council reasonably requires.

8.2 Requirements for Policies

Each policy the Permit Holder takes out under this clause 6 must:

8.2.1 be with an insurer and on terms approved by the Council;

8.2.2 be in the name of the Permit Holder and note the interest of the Council and any other person the Council requires;

8.2.3 cover events occurring during the policy's currency regardless of when claims are made; and

8.2.4 note that despite any similar policies of the Council, the Permit Holder's policies will be primary policies.

8.3 Evidence of Insurance

The Permit Holder must give the Council certificates evidencing the currency of the policies the Permit Holder has taken out under this clause 6. During the Term of the Permit, the Permit Holder must keep each policy valid and enforceable at all times.

9. INDEMNITY AND RELEASE

9.1 The Permit Holder is liable for and indemnifies the Council from and against all actions, costs, claims and damages, which may be brought or claimed against the Council arising out of or in relation to the granting of the Permit or the undertaking of the Business Activity except where any action, cost claim or damage is caused by the negligence or default of the Council.

9.2 The Permit Holder releases the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in, on, over or in the vicinity of the Location except to the extent that they are caused by the Council's negligence or default. This clause does not limit any release the Council may have from any actions, liabilities, penalties, claims or demands pursuant to any Legislation.

9.3 Each indemnity is independent from the Permit Holder's other obligations and continues during this Permit and after this Permit ends.

10. DAMAGE

- 10.1 The Permit Holder must not permit, cause or contribute to damage to the Location, including the road, footpath, Council owned or controlled land or property in the immediate vicinity of the Location or any of the Council's Equipment in carrying out the Business Activity or otherwise in connection with this Permit.
- 10.2 If the Permit Holder does cause any damage to the Location, including the road, footpath, Council owned or controlled land or property, or any of the Council's Equipment, the Permit Holder must immediately notify the Council and at its own cost and expense immediately rectify the damage and reinstate the Location to the satisfaction of the Council and in accordance with all directions and requirements of Council.
- 10.3 If the Permit Holder fails to promptly rectify and repair any such damage to the Location pursuant to clause 10.1, or alternatively if the Council elects in its discretion, the Council may undertake the rectification and repairs itself, without notice having been given to the Permit Holder and the Council shall be entitled to recover from the Permit Holder as a liquidated debt any costs incurred in doing so.

11. COUNCIL'S RIGHTS AND OBLIGATIONS

11.1 Right to Enter and Inspect

The Council may (except in the case of emergency when no notice will be required) enter the Location at any time after giving the Permit Holder reasonable notice for any reason including to inspect the Location, the Permit Holder's Equipment and any Alteration or to do repairs or other works or to satisfy any Statutory Requirements.

11.2 Emergencies

In an emergency the Council may close the Location and prevent access to the Location by the Permit Holder without prior notice.

12. RELOCATION

- 12.1 Subject to the Act and the Regulations, the Council may in its absolute discretion relocate the Permit Holder to another location (including as a result of a change to the Council's Mobile Food Vendor Sites) or re-delineate any one or more of the boundaries of the Location, provided that the Council first gives reasonable notice to the Permit Holder of the Council's intention to do so.
- 12.2 If the Council gives notice under clause 12.1, the Council may do any one or any combination of the following:
- 12.2.1 direct the Permit Holder to relocate to the new location; or
 - 12.2.2 terminate this Permit and require that the Permit Holder enter into a new Permit on the same terms except varied as necessary as a result of the relocation.

13. RIGHTS AND OBLIGATIONS ON EXPIRY & BREACH

13.1 Termination of Permit

- 13.1.1 The Permit will immediately cancel on the earlier of:
- 13.1.1.1 the expiration of the Term; or
 - 13.1.1.2 the termination of the Permit by the Council as permitted under this Permit.

13.2 Handover of Location

13.2.1 On or before the expiry of the Term the Permit Holder must:

13.2.1.1 cease using the Location for the Business Activity;

13.2.1.2 remove any Permit Holder's Equipment and any Alteration; and

13.2.1.3 repair any damage caused by such removal in accordance with clause 10.

13.3 Council's Rights on Breach

13.3.1 If the Permit Holder is at any time in breach of any of its obligations under this Permit, the Council and anybody authorised by the Council for that purpose may:

13.3.1.1 give notice specifying the breach and requiring the Permit Holder to remedy the breach within a reasonable period of time, being at least fourteen (14) days, unless the Council determines that a shorter period should apply to protect the health or safety of the public;

13.3.1.2 at any time thereafter come onto the Location without notice and do all things necessary to remedy that breach.

13.3.2 the Permit Holder will be liable to pay or reimburse the Council for all costs and expenses incurred in that regard which the Council may recover from the Permit Holder as a debt.

13.3.3 The Permit Holder must immediately notify the Council if it breaches any provision of this Permit.

13.3.4 This clause 13 does not limit or prevent Council's powers under sections 224A and 225 of the Act.

14. GENERAL

14.1 Execution of Permit

This Permit is not effective until the Permit Holder has received a copy of the Permit signed by the Council.

14.2 Permit Not Transferable

14.2.1 This Permit is not transferable.

14.2.2 The Permit Holder must notify the Council in writing prior to entering into any binding contract for sale, transfer or to lease, licence or franchise the business of the Permit Holder to which this Permit relates, that the Permit Holder intends to enter into such contract.

14.3 Waiver

If the Council accepts or waives any breach, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach.

14.4 Dispute Resolution

The Permit Holder acknowledges and agrees that any disputes in relation to the use of a Mobile Food Vendor Site or the conduct of the Business Activity must be referred to the Council for resolution in the first instance.

14.5 Severance

If any part of this Permit is found to be invalid or void or unenforceable, then that part will be severed from this Permit and the remainder of this Permit will continue to apply.

14.6 Special Conditions

The Permit Holder acknowledges and agrees that the Special Conditions (if any) form part of this Permit and bind the Permit Holder, and to the extent there is any inconsistency between the Special Conditions and any other term of this Permit, the Special Conditions shall prevail.

14.7 Entire Permit

The Council and the Permit Holder acknowledge and agree that this Permit contains and represents the entire agreement reached between them with regard to the Location and that no promises, representations or undertakings, other than those contained in this Permit, were made or given or relied upon.