PW Z B DTDR HRC FL FP RV

APP. DATE: _____ PERMIT #: _____

PERMIT EXPIRES: June 30, _____

Development Services Center
161 S. Charlotte St., Rm A101
P.O. Box 7148
Asheville, NC 28802
(828) 259-5829
www.Ashevillenc.gov

CITY OF ASHEVILLE
OUTDOOR DINING, OUTDOOR MERCHANDISE, OR PUSHCART PERMIT APPLICATION

Completed application, site plan, drawings, all supplemental information, and fees are required at the time of submittal. You MUST also submit a completed Encroachment Agreement application if area is greater than 30 sq ft and for pushcarts.

APPLICATION TYPE (check all that apply)

☐ Outdoor Dining ☐ Outdoor Merchandise ☐ Pushcart ☐ Permit Renewal Old permit #: _____

SITE LOCATION & DESCRIPTION

Site Address or Pushcart Map #: _____ PIN #: _____

APPLICANT & BUSINESS INFORMATION

Applicant Name(s): _____ Email: _____

Mailing Address/State/Zip: _____

Phone: _____ Cell Phone: _____ FAX: _____

Business Name: _____ Privilege License # (required): _____

Business Address (if different from mailing): _____

Property Owner Name (if different from applicant): _____ Phone: _____

OUTDOOR DINING REQUIREMENTS

Is sidewalk dining area less than 30 sq ft ? ☐ Yes ☐ No , if no, you MUST attach Encroachment Agreement application

REQUIRED DOCUMENTATION

☐ Drawing/s showing (include drawing for first time permits and/or if changes have occurred from a prior permit)
- Sidewalk width from the front of the building to the street edge
- Required 6 feet of pedestrian passageway
- Location, dimensions, and total sq. footage of outdoor dining area
- Location and size dimensions of any canopy, awning, fencing, or railing attached to sidewalk
- Indicate the number of and location of tables and chairs within the dining area
- Any City trash receptacle, tree, or tree pit adjacent to your merchandise area

☐ Certificate of Insurance for $1,000,000 (one million) showing City of Asheville as additional insured
☐ Completed Encroachment Agreement Application (only for new applications and/or changes to previous permits)
☐ Health Department Certificate
☐ ABC Permit
☐ Permit Application Fee

OUTDOOR MERCHANDISE REQUIREMENTS

Is merchandise area less than 30 sq ft ? ☐ Yes ☐ No , if no, you MUST attach Encroachment Agreement application

REQUIRED DOCUMENTATION

☐ Drawing/s showing (include drawing for first time permits and/or if changes have occurred from a prior permit)
- Sidewalk width from the front of the building to the street edge
- Required 6 feet of pedestrian passageway
- Location, dimensions, and total sq. footage of outdoor merchandise area
- Location of trash receptacles and/or any other accessory within the merchandise area
- Any City trash receptacle, tree, or tree pit adjacent to your merchandise area

☐ Certificate of Insurance for $1,000,000 (one million) showing City of Asheville as additional insured
☐ Completed Encroachment Agreement Application (only for new applications and/or changes to previous permits)
☐ Permit Application Fee

(OVER)

PERMIT #: _____

PUSHCART REQUIREMENTS

Product Sold: ☐ Food ☐ Merchandise

List ALL types of food or merchandise to be sold :

Requested Location (refer to attached map):	1st Choice #:	2nd Choice #:

Hours and Days of Operation :	hours	days

Pushcart Dimensions and Specifications:

Height:	Width:	Length:	Total sq. ft: (length x width)		Height of umbrella above cart:	

REQUIRED DOCUMENTATION

- ☐ Current photo of the pushcart (or , if not built, a drawing showing the design)
- ☐ Photo demonstrating trash receptacle, cooler, and all signage are attached to the cart
- ☐ Certificate of Insurance for $1,000,000 (one million) showing City of Asheville as additional insured
- ☐ Health Department Certificate or letter of non-requirement from Health Department (food only)
- ☐ Completed Encroachment Agreement Application (only for new applications and/or changes to previous permits)
- ☐ Permit Application fee

Any additional required approvals or permits from the City of Asheville and/or Buncombe County, including but not limited to Privilege License and Health Department permit, shall be obtained as needed.

Permit and Certificate of Liability must be kept on premise at all times. If the Certificate of Liability insurance coverage is not maintained for the duration of the permit time limits, this permit may be revoked and any first-right-of-renewal may be revoked.

The undersigned hereby certifies that he/she has reviewed and agrees to abide by the requirements for Pushcart Vending, and/or Outdoor Dining, and/or displaying Outdoor Merchandise as set forth in Article V of Chapter 16 of Code of Ordinances of the City of Asheville and that the information provided in this application is correct and complete. The undersigned further agrees to indemnify and hold harmless the City of Asheville, its officials, officers and employees, from and against any and all claims, causes of action, suits, damages, costs, losses and expenses (including, but not limited to, attorney's fees) for personal injury and/or property damage which arise out of or may be related to activities, or activities related to those activities, as described in this permit, save and excepting them from any negligence of or by the City of Asheville, its officials, officers, or employees.

Further, the undersigned agrees to indemnify and hold harmless the City of Asheville, its officials, officers and employees, from and against any and all claims, causes of action, suits, damages, cost, losses and expenses (including, but not limited to, attorney's fees) which arise out of or may be related to the failure of the undersigned to comply with the Americans with Disabilities Act (the "Act"), the North Carolina State Building Code (the "Code"), any regulations promulgated pursuant to the Act or the Code and all other health and safety laws and regulations.

Signature: _____ Date: _____

FOR OFFICIAL USE ONLY

Date App Received:	Application Completed:	Receipt #:

Zoning District:	Overlay District:	Flood Plain: Yes ☐ No ☐	Variance: Yes ☐ No ☐ Date:

Permit Request	Plans Submitted	Contractor Business Name	State License #	Privilege License #	Cost of Work	Permit Fees
☐ DSC	☐				$	$
☐ Zoning	☐				$	$
☐ Public Works	☐				$	$
☐ Surcharge/Other	☐				$	$

Comments:

Total Fee $

Reviewed By:	Date:	On-Site Inspection Date:

☐ Approved ☐ Denied (Reasons):

APP. DATE: _____ FOR PERMIT #: _____

CITY OF ASHEVILLE
ENCROACHMENT AGREEMENT APPLICATION

Development Services Center
161 S. Charlotte St., Rm A101
P.O. Box 7148
Asheville, NC 28802
(828) 259-5937
www.Ashevillenc.gov

Completed application, site plan, drawings, all supplemental information, and fees are required at the time of submittal. Information will be verified and used in development of a legal agreement between the applicant and the City of Asheville.

ENCROACHMENT AGREEMENT REQUEST FOR

☐ Outdoor Dining ☐ Outdoor Merchandise ☐ Sign ☐ Other _____

SITE LOCATION & DESCRIPTION

Site Address: _____ PIN #: _____

APPLICANT & BUSINESS INFORMATION

Applicant Name(s): _____ Email: _____

Mailing Address/State/Zip: _____

Phone: _____ Cell Phone: _____ FAX: _____

Business Name: _____ Privilege License # (required): _____

Business Address
(if different from mailing): _____

Property Owner Name
(if different from applicant): _____ Phone:

Property Owner Address:
(if different from applicant): _____

SPECIFICATIONS OF ENCROACHING STRUCTURES OR MERCHANDISE

Location of
Encroaching Structures: _____ Size: Height: _____ Width: _____ Length: _____

☐ Attach a site plan showing location of furniture, canopies, fencing, dimensions of dining or merchandise area, and pedestrian passageway. If a sign, attach a drawing of the sign and location on the wall or sidewalk.

Neighborhood Characteristics (check all that apply):

☐ Commercial ☐ Heavy Motoring Traffic ☐ Heavy/Light Concentration of Children
☐ Residential ☐ Heavy Pedestrian Traffic ☐ Other (Explain) _____

Reason and Why Necessary: _____

Will encroachment: (provide documentation for any YES answers)

1. Be reviewed by Downtown Design Review or HRC Review Process? ..... ☐ No ☐ Yes
2. Be located within a public/private traveled road? ..... ☐ No ☐ Yes
   If NO, how far is encroachment from a traveled road? _____ ft.
3. Block regulatory signs, crosswalks, intersections, or cause site visibility problems? ..... ☐ No ☐ Yes
4. Interfere with pedestrian (6' pedestrian zone) or vehicular passage or safety? ..... ☐ No ☐ Yes
5. Obstruct Police or Fire Departments in responding to service calls? ..... ☐ No ☐ Yes
6. Prevent easy accessibility to street cleaning equipment? ..... ☐ No ☐ Yes
7. Require removal of trees along public right-of-way? ..... ☐ No ☐ Yes
8. Be located in proximity to garbage collection? ..... ☐ No ☐ Yes
9. Be in close proximity to an area where mail is delivered? ..... ☐ No ☐ Yes
10. Be located in the exit pattern of a building? ..... ☐ No ☐ Yes
11. Include structures protruding over public way at a height less than 8' (canopies 7')?..... ☐ No ☐ Yes
12 Include sharp edges, protrusions, or other features hazardous to the public? ..... ☐ No ☐ Yes
13 Be constructed over an existing water or wastewater line or other utility? ..... ☐ No ☐ Yes
   Interfere with an existing water or wastewater line or other utility? ..... ☐ No ☐ Yes
14. Be constructed over an existing stormwater facility or other utility? ..... ☐ No ☐ Yes
   Interfere with an existing stormwater facility or other utility? ..... ☐ No ☐ Yes

(OVER)

FOR PERMIT #: _____

ADDITIONAL REQUIRED DOCUMENTATION

☐ **MUST** include Certificate of Insurance for **$1,000,000 (one million dollars)** showing the City of Asheville as an additional insured. Insurance MUST be maintained for the entire duration of the permit time.

NOTE: **All owners of the real property requesting the proposed encroachment must sign this application. If the applicant is not the owner and acting on behalf of the owner/s, appropriate documentation must be submitted showing proof that the applicant is authorized to file this application on behalf o the owner/s.**

NOTE: **Permit and Certificate of Liability must be kept on premise at all times. If the Certificate of Liability insurance coverage is not maintained for the duration of the permit time limits, this agreement and associate permit may be revoked and any first-right-of-renewal may be revoked.**

Owner Signature: _____ **Date:** _____

Owner Signature: _____ **Date:** _____

Owner Signature: _____ **Date:** _____

Leasee Signature: _____ **Date:** _____

Space for Additional Information

FOR OFFICIAL USE ONLY

Date App Received:	**Application Completed:**	**Receipt #:**
Zoning District:	**Overlay District:**	**Flood Plain: Yes** ☐ **No** ☐
		Variance: Yes ☐ **No** ☐ **Date:**

Permit Request	Plans Submitted	Contractor Business Name	State License #	Privilege License #	Cost of Work	Permit Fees
☐ DSC	☐				$	$
☐ Public Works	☐				$	$
☐ Surcharge/Other	☐				$	$
Comments:					**Total Fee**	$

Reviewed By:	**Date:**	**On-Site Inspection Date:**
☐ **Approved**	☐ **Denied (Reasons):**	

OUTDOOR DINING, OUTDOOR MERCHANDISE, and PUSHCART INFORMATION SHEET

Based on the following descriptions, determine which of the attached applications you need to complete. City Ordinance #3024 is attached.

- Refer specifically to Sec. 16-146 for **Outdoor Dining Area** Requirements
- Refer specifically to Sec. 16-147 for **Outdoor Merchandise** Requirements
- Refer specifically to Sec. 16-144 for **Pushcart** Requirements *(allowed in Central Business District – downtown and in Biltmore Village only)*

A **Permit** is required for dining or merchandise areas which use 30 sq. ft. or less of sidewalk space and do not have anything attached to the sidewalk. If this is the case, *only the application and attachments are required.*

A **Permit** and an **Encroachment Agreement** are required for pushcarts and dining or merchandise areas which use over 30 sq. ft. of sidewalk space and/or which have something attached to the sidewalk. If this is the case, the *application, attachments, and Encroachment Agreement Application are required.*

1. If you want to add any type of signage, including an A-frame sign or temporary signage, contact the Sign Administrator at (828-259-5822) for information and additional permit requirements.
2. If applicable (food sales only), contact the Health Department, located at 35 Woodfin Street (828-250-5016), to make sure that all Health Department rules are being followed. Obtain Health Department Certificate or letter of non-requirement.
3. If applicable, to serve alcoholic beverages, contact Alcoholic Beverage Control located at Ridgefield Business Center (828-670-5055), for their requirements on serving alcoholic beverages. Obtain an ABC permit. *(For Outdoor Dining permits ONLY)*
4. Obtain a Certificate of Insurance for $1,000,000. **You need to include the City of Asheville as "Additional Insured".** Permits will not be issued without the "Additional Insured" verbiage.
5. Contact Customer Services, located on the First Floor of City Hall (828-251-1122), to determine if adding the outdoor dining or merchandise area will increase your Privilege License fee.
6. The City of Asheville's permit year runs from July 1 until June 30th of the following year.
7. Permit and Certificate of Liability must be kept on premise at all times. If the Certificate of Liability insurance coverage is not maintained for the duration of the permit time limits, permit may be revoked and any first-right-of-renewal may be revoked.

ADDITIONAL PUSHCART GUIDELINES 5/27/05

a. The ordinance defines a pushcart as a wheeled cart specifically designed and used for displaying, keeping, or storing any food, beverages or other articles for sale by a vendor, which may be moved by one person without the assistance of a motor.

b. The pushcart shall have the features of a standard pushcart (i.e. handles, at least 6 in. wheels, a display surface, etc.) and the dimensions of the pushcart must meet the following size requirements:

c. Pushcarts shall be a minimum of 28 inches (2 ft. 4 in.) tall and shall not exceed 54 inches (4 ft. 6 in.) in height, as measured from the ground to the highest point of the pushcart;

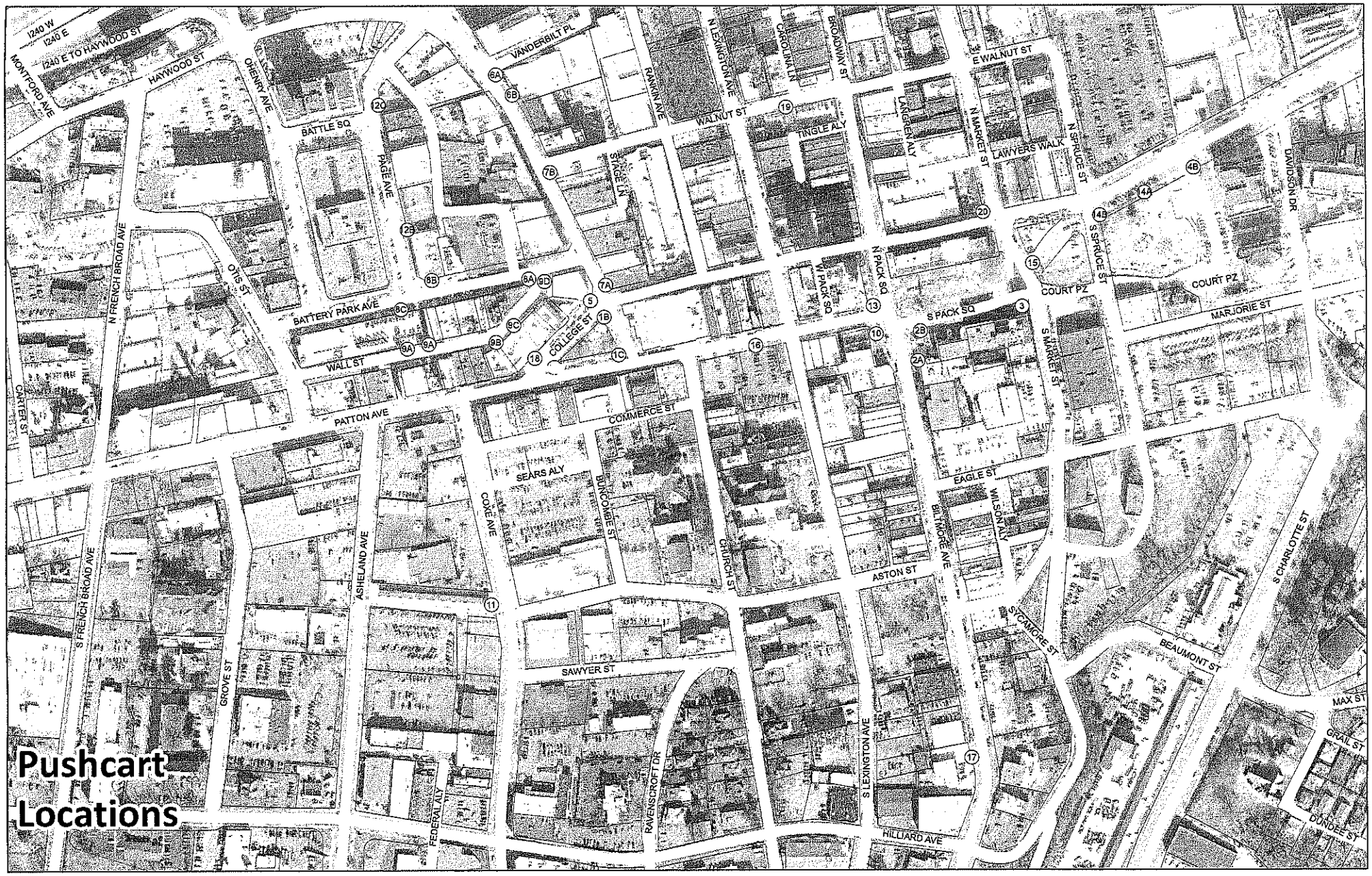
d. Pushcarts shall be a minimum of 24 inches (2 ft.) in width and a minimum of 36 inches (3 ft.) in length, which totals 6 square feet, but in no event exceed 24 square feet as measured in length and width (the overall footprint), excluding any trailer hitch; and

e. Five feet (5') for the height of any umbrella affixed to the pushcart, as measured from the base of the umbrella to the highest point of the umbrella. No freestanding umbrella or canopy shall be used.

f. The wheels on the pushcart must be no less than 6 inches in diameter.

g. The City reserves the right to require smaller dimensions based upon such factors as, but not limited to, pedestrian and vehicular safety and adequate sight distances.

If you have any questions, please call the Permit Administrator at (828) 259-5829.



Pushcart Locations

KEY – APPROVED PUSHCART LOCATIONS IN CENTRAL BUSINESS DISTRICT (revised 5/27/11)

NOTE: Not all sites are available; call 828-259-5829 for availability

1. Pritchard Park: 2 locations
   b) Corner across from Spritex
   c) Corner across from Bank of America

2. Pack Place: 2 locations
   a) Alcove in front of Pack Place Biltmore Ave side
   b) under the Pack Place sign

3. Jackson Building. Across from the entrance to the Jackson building close to the curb not in the circular area.

4. City County Plaza:
   a) Courthouse, on left side, next to courthouse building

5. Corner of Haywood St. and College St

6. Pack Memorial Library
   a) Pack Memorial Library, next to metal railing
   b) at the curb beside tree

7. Haywood Street
   a) in front of CVS, next to curb
   b) corner of Haywood St. and Walnut St. (behind northernmost bench and beside bike rack - Mobilia)

8. Battery Park:
   a) corner next to Wall Street, in front of benches
   b) wall on corner next to old Kostas store
   c) wall next to Wall St. garage

9. Wall Street:
   a) next to Wall Street at Climbing Center across from The Laughing Seed (1 of 2 locations)
   a) next to Wall Street at Climbing Center behind the elevator for Wall St garage (2 of 2 locations)
   b) next to Wall Street in front of Market Place Restaurant at 20 Wall St.
   c) near Early Girl Eatery (MERCHANDISE ONLY)
   d) between the two bollards behind the Urban Trail Iron

10. Pack Square - corner at Sisters McMullan area (Merchandise only)

11. Bus Station (Coxe Ave)

12. Page Avenue
    b) bulb out next to Haywood Park Hotel parking lot (south side only)
    c) At Battle Sq left of 33 Page

13. BB&T Building In front of the BB&T Building (in front of tree planter beside electrical box next to curb)

14. College St:
    a) Sidewalk next to bench
    b) At bulb out across from way finding station

15. Market St.. right of bike rack facing the park

16. Patton Ave: Across from 27 Patton Ave (12sf Max)

17. Biltmore Ave. 91 Biltmore Ave.

18. College St – Pritchard Park area. College Street left of Tupelo Honey at the curb

19. Walnut St – Bulb in across from Scully's

20. Market and College St. Next to fence on Market

PERMIT FEE SCHEDULE
Effective 7/1/08

TYPE OF PERMIT	APPLICATION FEE	RENEWAL FEE
A-FRAME SIGN	$25	$25
PUSHCART	$125	$125
PUSHCART RELOCATION	$75	
OUTDOOR DINING/MERCHANDISE	$175	$25
Less than 30 square feet		
OUTDOOR DINING/MERCHANDISE with ENCROACHMENT AGREEMENT		
31-50 sq. ft.	$ 250	$50
51-100 sq. ft.	$ 350	$75
101-200 sq. ft.	$ 500	$100
201-500 sq. ft.	$1,000	$200
501+ sq. ft.	$2,000	$400

ARTICLE V. SELLING, ENTERTAINING AND DINING*

*Editor's note: Ord. No. 3024, adopted May 27, 2003, deleted Art. V, §§ 16-141 through 16-161, in its entirety and enacted similar provisions for a new Art. V as set out herein. Former Art. V pertained to selling, entertaining and dining. A history of former Art. V can be found in the Code Comparative Table.

Cross references: Licenses, permits and business regulations, ch. 9.

State law references: Pedestrians soliciting rides, employment, business or funds upon highways or streets, G.S. 20-175.

DIVISION 1. GENERALLY

Sec. 16-141. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Biltmore Village Historic District means the overlay zoning district designated by that name in Appendix 7-E of this Code, described therein and outlined on the official zoning map of the city.

Central Business District means the general use zoning district defined by that name in chapter 7 of this Code and outlined on the official zoning map of the city.

Merchandise includes, but is not limited to, plants, flowers, wearing apparel, jewelry, ornaments, art work, household or office supplies, food or beverages of any kind, whether or not for immediate consumption, or other goods or wares.

Office and business uses correspond to the use tables found in Chapter 7, Article VIII of the Unified Development Ordinance.

Outdoor dining area means an area in front of or adjacent to a restaurant and located on a public sidewalk or square whereon tables, chairs or benches are placed for dining purposes.

Outdoor merchandise area means an area in front of or adjacent to a retail business where merchandise is located on a public sidewalk for the purpose of displaying, exhibiting, selling or offering for sale merchandise.

Pushcart means a wheeled cart which may be moved by one person without the assistance of a motor and which is designed and used for displaying, keeping or storing any food, beverages or other articles for sale by a vendor.

Sidewalk means all that area legally open to public use as a pedestrian public way between the curb line and the public right-of-way boundary along the abutting property.

Sidewalk entertainment means performances which may include, but not be limited to, music, dance, mimes, magicians, clowns, jugglers and theatrical presentations, but specifically excluding speeches, lectures, and sermons.

(Ord. No. 3024, 5-27-03; Ord. No. 3266, § 1(a), 7-26-05)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 16-142. Scope.

Except as a permit may be issued pursuant to this article V for locations within the Central Business District, the Biltmore Village Historic District, or other zoning districts where office and business uses are a permitted use, it shall be unlawful for any person to sell, offer for sale, exhibit or demonstrate any goods, wares, merchandise, mechanical devices, animals or any article of any kind whatsoever, by whatever name called, upon any public street, sidewalk, square, avenue or alley within the corporate limits of the city.

(Ord. No. 3024, 5-27-03; Ord. No. 3266, § 1(b), 7-26-05)

Sec. 16-143. Exceptions.

(a) None of the requirements of this article for permits or encroachment agreements shall apply to the sale of food and other products from pushcarts, outdoor dining areas, or outdoor merchandise areas which are otherwise allowed under the community events and festivals permit set forth in section 16-97.

(b) Permits issued for pushcarts and outdoor merchandise areas under the provisions of this article shall be temporarily suspended at locations designated for the community events and festivals permitted under section 16-97 of this Code. Permit holders may, however, apply to continue their operation during the community event or festival pursuant to the procedures set up by the community event or festival permit holder. Community events and festivals will be posted in the Rankin Street Garage Arcade and on the City's website. Permits issued for outdoor dining areas shall not be temporarily suspended in areas designated for a community event or festival.

(Ord. No. 3024, 5-27-03)

Sec. 16-144. Pushcarts.

All pushcarts and their operators shall meet the following requirements:

(1) The pushcart shall not be motorized or propelled in any manner other than the walking motion of the person operating the pushcart, with the exception that persons with disabilities may use a motorized system to propel the pushcart. No motorized assistance shall be used to locate the pushcart on the sidewalk or public place, with the exception that persons with disabilities may use motorized assistance.

(2) The pushcart shall be covered with an appropriate material to prevent exposure of the food or food product to wind, dust, insects and the elements and shall meet any such other regulations as may be required by the county health department or any other applicable regulatory agency. The pushcart operator shall display, in plain view, all required permits as set forth by federal, state, and local laws and shall provide a copy of health department and other regulatory agency permits and/or licenses to the city prior to the issuance of a permit by the city for the pushcart. The pushcart operator shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the city of the continuous maintenance of them.

(3) The pushcart shall have attached to it a proper container for the collection of waste and trash. The pushcart operator shall be responsible for the proper disposal of waste and trash associated with the pushcart operation. No grease, waste, trash or other debris from the pushcart operation shall be deposited on or released onto city property, which includes the streets, sidewalk or other public place nor into the gutter or storm drainage system. The pushcart operator shall keep the immediate area in a 5 ft. radius from the center of the pushcart clean of garbage, trash, paper, cups, cans or litter associated with the pushcart operation. Unless otherwise permitted by the city, a pushcart operator shall not locate a container for the collection of waste and trash on the streets, sidewalks or public places nor use city trash receptacles, city street cans or other city waste disposal containers for the disposal of waste and trash associated with the pushcart operation.

(4) The pushcart shall not have attached to it any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers, nor shall the permit holder use any such device to attract attention.

(5) Signs attached to the pushcart shall comply with the requirements of article XIII of chapter 7 of this Code.

(6) The pushcart shall be set up only in the location set forth in the operator's permit issued by the city, and shall not impede, endanger or interfere with pedestrian or vehicular traffic.

(7) The pushcart shall be set up so that a minimum of six feet of passage for pedestrians or the minimum required by the Asheville Standard Specifications and Details Manual, whichever is more restrictive, shall be provided at all times.

(8) The pushcart shall not be stored, parked or left overnight on any street or sidewalk or in any parking space of the city.

(9) The pushcart shall operate only at times between the hours of 7:00 a.m. and 10:00 p.m.

(10) No item related to the operation of the pushcart shall be placed on the street, sidewalk, public place or anywhere other than in or on the pushcart.

(11) Pushcart operators shall not consume nor be under the influence of alcohol or controlled substance while operating the pushcart.

(12) The dimensions of the pushcart shall be no greater than the following:

a. 4 feet 6 inches in height as measured from the ground to the highest point of the pushcart; and
b. 24 square feet as measured in length and width (the overall footprint), excluding any trailer hitch; and
c. 5 feet for the height of any umbrella affixed to the pushcart, as measured from the base of the umbrella to the highest point of the umbrella. No freestanding umbrella or canopy shall be used.

The city reserves the right to require smaller dimensions based upon such factors as, but not limited to, pedestrian and vehicular safety and adequate sight distances.

(13) The pushcart permit holder or her/his designee shall be in attendance at the pushcart at all times, except in case of an emergency.

(14) The pushcart operator shall comply with all federal, state and local laws when operating the pushcart.

(15) Design of pushcarts which are to be permitted for located in the Biltmore Village Historic District area must be approved by the historic resources commission prior to a permit being issued for their use in the Biltmore Village Historic District. Design of pushcarts which are to be permitted for the Central Business District must be approved by the city's planning and development director or her/his designee, using the city's downtown design review guidelines, prior to a permit being issued for their use in the Central Business District. The applicant must provide a photograph, drawing or sketch of the design of the pushcart as part of the application for a permit.

(16) Any pushcart with a valid permit as of May 15, 2003, that complies with Ordinance No. 2595(1)(b); Section 16-144 (13) passed June 22, 1999, or in operation before the passage of said ordinance, will be allowed to continue operation subject to the remaining provisions of this Code section. This exception shall be in effect until the time that the operator or his successors can no longer maintain the cart in a fashion acceptable to the Health Department or in a fashion that precludes its ready removal in the event of an emergency situation.
(Ord. No. 3024, 5-27-03)

Sec. 16-145. Performers of sidewalk entertainment.

Performers of sidewalk entertainment shall meet the following requirements:

(1) Not violate the prohibitions on disturbing, annoying and unnecessary noise as set forth in article IV of chapter 10 of the Code.
(2) Not violate the prohibitions on solicitation as set forth in City Code section 11-5 and 11-14.
(3) Not obstruct or cause to be obstructed pedestrian or vehicular traffic, including but not limited to not obstructing or causing to be obstructed sidewalks, doorways or other access areas. Entertainer must provide a minimum of 6 feet of pedestrian passageway.
(4) The sale of records, tapes or other products shall not be permitted.
(5) Perform only at times between the hours of 9:00 a.m. and 10:00 p.m.
(6) Not consume nor be under the influence of alcoholic beverages or other controlled substances while performing, in compliance with the North Carolina laws and regulations.
(7) Not perform any closer than 40 feet from another performer.
(8) Not perform at locations designated for a community event or festival, unless permitted to play at the community event or festival by the event or festival coordinator, pursuant to section 16-97 of the Code.
(9) Comply with all federal, state and local laws when performing within the city, including but not limited to, the solicitation ordinance and the noise ordinance.

(Ord. No. 3024, 5-27-03)

Sec. 16-146. Outdoor dining areas.

Permit holders for outdoor dining areas and their employees shall meet the following requirements:

(1) For outdoor dining areas which occupy a footprint of more than 30 square feet or for which a fence, canopy or other structure will be affixed to the sidewalk, a permit shall be required in the form of an encroachment agreement entered into pursuant to the provisions of article III of chapter 16 of this Code. For all other outdoor dining areas, a permit shall be required pursuant to the provisions of this article. In all cases, compliance with the provisions of this article is required.
(2) The permit holder shall set up the outdoor dining area, including, but not limited to, the furniture, canopies, fencing and/or other accessories used for the outdoor dining area, only in the area designated by the city in the encroachment agreement or on the permit, specifically excluding roadways. The outdoor dining area shall not impede, endanger or interfere with pedestrian or vehicular traffic.
(3) Furniture, canopies, fencing and/or other accessories used for the outdoor dining area shall be located so that a minimum clearance of six feet of pedestrian passage on sidewalks, or the minimum required by the Asheville Standard Specifications and Details Manual, the North Carolina State Building Code or the Americans with Disabilities Act, whichever is more restrictive, shall be provided at all times.
(4) The permit holder shall provide proper containers or some other means for the collection of waste and trash within the outdoor dining area permitted. The permit holder shall keep the immediate area around the outdoor dining area and the outdoor dining area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor dining area. All waste and trash shall be properly disposed of by the permit holder.
(5) The permit holder shall comply with all county health and other applicable regulatory agency requirements, including, but not limited to, the requirements for food preparation and service. The permit holder shall display in a conspicuous location all such required permits and/or licenses and shall provide copies of those permits and/or licenses to the city prior to issuance of a permit for an outdoor dining area by the city. The permit holder shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the city of the continuous maintenance of them.
(6) The permit holder shall be responsible for the maintenance, upkeep and security of the furniture and accessories of the outdoor dining area and the city shall not be responsible for the same.

(7) The permit holder shall not have on the premises any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers nor shall the permit holder use any such device to attract attention.
(8) Signs attached to the outdoor dining area shall comply with the requirements of article XIII of chapter 7 of this Code.
(9) Employees of the permit holder for the outdoor dining area shall not consume alcoholic beverages while working in the outdoor dining area.
(10) For any outdoor dining area where alcoholic beverages are served, the permit holder shall comply with all state and local regulations for the sale, possession and/or consumption of alcoholic beverages and shall provide the city with a copy of any and all required permits or licenses for the sale, possession and/or consumption of alcoholic beverages and the diagram and/or plans showing the location of the outdoor dining area which were submitted for the permit or license.
(11) The permit holder shall comply with the prohibitions on disturbing, annoying and unnecessary noises set forth in section 10-81.
(12) Design of the furniture and accessories for an outdoor dining area to be located in the Central Business District must be approved by the City's Planning and Development Director or her/his designee, using the city's downtown design review guidelines, prior to a permit being issued for their use in the Central Business District. Design of the furniture and accessories for an outdoor dining area to be located in the Biltmore Village Historic District must be approved by the Historic Resources Commission prior to a permit being issued for their use in the Biltmore Village Historic District. The applicant must provide a photograph, drawing or sketch of the design of the furniture and accessories to be used for the outdoor dining area as part of the application for a permit.
(Ord. No. 3024, 5-27-03)

Sec. 16-147. Outdoor merchandise areas.

Permit holders for outdoor merchandise areas and their employees shall meet the following requirements:
(1) For outdoor merchandise areas which occupy a footprint of more than 30 square feet, a permit shall be required in the form of an encroachment agreement entered into pursuant to the provisions of article III of chapter 16 of this Code. For outdoor merchandise areas which occupy a footprint of 30 square feet or less, a permit shall be required pursuant to the provisions of this article. In all cases, compliance with the provisions of this article is required.
(2) Outdoor merchandise areas shall be located only in the area designated by the city and indicated in the encroachment agreement or on the permit, specifically excluding roadways. Merchandise and the fixtures or devices on which it is displayed shall be located so that they do not impede, endanger or interfere with pedestrian or vehicular traffic.
(3) Merchandise and the fixtures or devices on which it is displayed shall be located so that a minimum of six feet of passage for pedestrian traffic, or the minimum required for pedestrian passage by the Asheville Standard Specifications and Details Manual, the North Carolina State Building Code or the Americans with Disabilities Act, whichever requirement is more restrictive, shall be provided at all times.
(4) No fixtures or devices on which outdoor merchandise is displayed shall be attached to the sidewalk or other public area without the permission of the city in the encroachment agreement.
(5) Outdoor merchandise areas will be permitted only adjacent to the building or structure in which the retail business is located. Outdoor merchandise areas shall not be permitted next to the curb of the street or sidewalk or in the middle of the sidewalk or in roadways.
(6) Merchandise and the fixtures or devices on which the merchandise is displayed must not block regulatory signs, crosswalks or intersections and shall be sufficiently lit during times of low light in order to provide for safe pedestrian passage alongside the outdoor merchandise area.
(7) All merchandise located within an outdoor merchandise area shall be placed so that the outdoor merchandise and the fixtures or devices on which the merchandise is displayed are stable and not easily tipped and do not include sharp edges, protrusions, or other features which may be hazardous to the public.
(8) All displays of merchandise within the outdoor merchandise area must meet a minimum height of 28 inches tall or of sufficient size or height so that safe pedestrian traffic is not impeded or must comply with the requirements of the Americans with Disabilities Act, whichever requirement is more restrictive.
(9) All merchandise and the fixtures or devices on which the merchandise is displayed shall be moved inside the building or structure wherein the retail business is located during hours the retail business is not operated and during inclement weather, including, but not limited to, heavy rain, wind, ice or snow.

(10) All merchandise and the fixture, or devices on which the merchandise is displayed must be secured so that it may not be dislodged during windy or stormy weather prior to being moved inside the building or structure wherein the retail business is located.
(11) In the event of a declared emergency or in a situation where exigent circumstances arise, a permit holder shall remove all articles from the sidewalk when directed to do so by any law enforcement officer, fire official or emergency medical personnel.
(12) The permit holder for the outdoor merchandise area shall be responsible for the maintenance, upkeep and security of the fixtures or devices on which the merchandise is displayed and the city shall not be responsible for the same.
(13) The permit holder for the outdoor merchandise area shall be responsible for keeping the outdoor merchandise area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor merchandise area.
(14) The permit holder for the outdoor merchandise area shall not have on the premises any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers nor shall the permit holder use any such device to attract attention.
(15) Signs attached to the outdoor merchandise area shall comply with the requirements of article XIII of chapter 7 of this Code.
(16) Outdoor merchandise areas shall not contain any live animals.
(17) Design of the outdoor merchandise areas to be located within the Biltmore Village Historic District must be approved by the Historic Resources Commission prior to a permit being issued.
(Ord. No. 3024, 5-27-03)

Secs. 16-148--16-155. Reserved.

DIVISION 2. PERMITS; ENCROACHMENT AGREEMENTS*

***Editor's note:** Ord. No. 2585, § 1(b), adopted June 22, 1999, changed the designation of div. 2 from "permits" to "permits; encroachment agreements."

Sec. 16-156. Permits or encroachment agreements required.
(a) Upon successfully completing an application and upon meeting all of the requirements in this chapter and the City Code, the city manager or her/his designee shall issue permits or execute encroachment agreements to allow outdoor dining areas, outdoor merchandise areas, or pushcarts only within the Central Business District and within the Biltmore Village Historic District or other zoning districts where office and business uses are a permitted use.
(b) A separate permit or encroachment agreement shall be required for each outdoor dining area, outdoor merchandise area, or pushcart.
(c) Pushcart vendors requesting relocation to a new site must complete a new application and pay a new application permit fee for the new location.
(Ord. No. 3024, 5-27-03; Ord. No. 3266, § 1(c), 7-26-05)

Sec. 16-157. Application.
Each application for a permit or encroachment agreement for an outdoor dining area, outdoor merchandise area, or pushcart shall be filed with the city manager or her/his designee and shall include but not be limited to the following:
(1) The name, address and telephone number of the applicant.
(2) The name of the individual, business or organization making the application and the business address and telephone number.
(3) For permits to allow pushcarts, the application shall include information about the type of food or other product to be sold; proposed times and area of operation; description, drawing, sketch, or photograph of the type of pushcart to be used; and other pertinent information related to the method of doing business under the permit. For permits to allow outdoor dining areas, the application shall include a site plan showing the proposed location of furniture, canopies, fencing and other accessories for the outdoor dining area; a description, drawing, sketch, or photograph showing the design of all furniture, fencing, canopies and accessories to be used in the outdoor dining area; location for the outdoor dining area; and other pertinent information related to the use of the outdoor dining area. For permits to allow outdoor merchandise areas, the application shall include a site plan showing the location of the outdoor merchandise area, the proposed location of fixtures or devices on which the merchandise is to be displayed, and other pertinent information related to the use of the outdoor merchandise area.

(4) For permits for pushcarts to allow the sale of food, food products and/or beverages and for permits or encroachment agreements for outdoor dining areas, the applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of $1,000,000.00 per occurrence and in the aggregate, provided that those certificates may be furnished as evidence of such coverage purchased for the applicant's principal place of business for serving food, food products and/or beverages, so long as such certificates meet the minimum acceptable requirements established in this section. For permits to allow the sale of other products from pushcarts, the applicant shall provide and maintain a certificate of insurance for comprehensive general liability in the minimum amount of $25,000.00 per occurrence and in the aggregate. For permits or encroachment agreements for outdoor merchandise areas, the applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of $1,000,000.00 per occurrence and in the aggregate, provided that those certificates may be furnished as evidence of such coverage purchased for the applicant's retail business, so long as such certificates meet the minimum acceptable requirements established in this section. All certificates shall be issued by an insurance company licensed to do business in North Carolina, shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advance written notice to the city. The permit holder or encroachment agreement party shall continuously maintain the insurance required by this section and shall continuously provide the city with evidence of the insurance required by this section.

(5) For permits to allow pushcarts, the application shall include the name and phone number of the sponsoring restaurant.

(6) The permit holder shall execute a statement on the permit application wherein the applicant holds harmless and indemnifies the city from any claims or causes of action arising out of or related to the permitted activity, including, but not limited to, compliance with the Americans with Disabilities Act, the North Carolina State Building Code and all other health and safety laws and regulations.

(7) Written approval from the county health department and/or other applicable regulatory agency showing that the pushcart or outdoor dining area has been inspected and is in compliance with current requirements for food handling establishments or sale of other product.

(8) Such additional information as may be requested by the city manager or her/his designee, which may be necessary to determine compliance with this article.

(9) Payment of the permit fee and/or encroachment fee required under the city's fees and charges manual.

(Ord. No. 3024, 5-27-03)

Sec. 16-158. Term; fees; transferability; display.

(a) A permit required by this article shall be issued for no greater than 12 months at a time and shall expire on June 30 of each year. Permit holders may apply annually for a new permit, using the same application procedure set forth in this article and paying the fee required under the city's fees and charges manual.

(b) Permit holders shall pay the applicable fee required for a permit and/or encroachment agreement under the city's fees and charges manual. The permits and fees required in this article are in addition to the annual privilege license required under this Code. No permit under this article shall be issued until the privilege license required under this Code has been issued to the applicant.

(c) Permits are not transferable or assignable.

(d) The permit must be conspicuously displayed by the permit holder while engaged in the activities allowed under the permit.

(e) The city shall designate locations where pushcarts, outdoor dining areas, and outdoor merchandise areas are permitted. No permit holder shall occupy more than 50% of the spaces designated by the city for any single category of the following: (i) pushcarts; (ii) outdoor dining areas; or (iii) outdoor merchandise areas. Permits for the designated areas shall be issued on a "first come, first served" basis provided the applicant complies with applicable requirements prior to the issuance of the permit. Applications will be accepted at the start of business on the first Monday in June.

(f) The city manager or her/his designee shall formulate any additional rules and regulations necessary for the proper administration of this ordinance.

(g) Permit holders are subject to relocation when their designated space is deemed to cause a hazard to public safety, sight distance, or vehicular congestion or other concerns by the city manager or her/his designee.

(Ord. No. 3024, 5-27-03)

Sec. 16-159. Denial.
Any applicant denied a permit under this article shall receive a statement, in writing, outlining the reasons for denial of the permit. The applicant may appeal the denial of the permit to the city manager within 15 working days after the date of the written denial. The determination of the city manager shall be final.
(Ord. No. 3024, 5-27-03)

Sec. 16-160. Revocation.
(a) The city manager or her/his designee may suspend or revoke any permit issued pursuant to this article upon the occurrence of any or all of the following events in which the permit holder has:
  (1) Provided false information or fraudulently misrepresented information in the permit application.
  (2) Violated this article, any local, state, federal law or any regulations of the county health department or other applicable regulatory agency.
  (3) Failed to comply with the requirements of this article or the terms of the permit issued or encroachment agreement entered into pursuant to this article.
  (4) Operated under the permit in such a manner as to create a public nuisance or to constitute any hazard to the public health, safety or welfare or to damage or destroy public property.
  (5) Failed to post conspicuously the permit at all times at the location where the activity is permitted.
  (6) Failed or ceased to conduct the activities allowed in the permit for a period of 15 consecutive days or more during the time period of April through September of any year or for a period of seven months or more during any time period.
  (7) Failed to secure and maintain any other licenses or permits required by local, state or federal laws or regulations.
(b) Before the permit is suspended or revoked, the city manager or her/his designee shall notify the permit holder of the intent to suspend or revoke the permit and the reasons therefor, shall provide the permit holder a reasonable time period within which to comply with the requirements of this article or the permit, and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such suspension or revocation. In the event that the permit holder has not satisfactorily complied with the requirements of this article or the permit within the set time period, the city manager or her/his designee may then suspend or revoke the permit.
(Ord. No. 3024, 5-27-03)

Sec. 16-161. Penalties.
It shall be unlawful for any person to violate any of the requirements of this article or of the permit issued under this article.
(a) Such violations shall be a misdemeanor and punishable as provided by N. C. Gen. Stat. sec. 14-4.
(b) In addition to and separate and apart from the other remedies set forth in this section, if any person is found to have violated any of the requirements of this article or a permit issued under this article, such violations shall subject the offender to a civil penalty in the amount of $100.00 per day for each day the violation continues, to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited for the violation. The procedures set forth in section 1-5 of this Code for violations which constitute a civil penalty are incorporated herein by reference.
(Ord. No. 3024, 5-27-03)

Secs. 16-162--16-170. Reserved.