

RESOLUTION NO. 2014-10

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED “DIVISION 8-03-002, SIDEWALK CAFES, SIDEWALK VENDING CARTS AND OTHER PERMITTED ENCROACHMENTS”

RECITALS:

WHEREAS, the City Council wishes to incorporate by reference amendments to Chapter 8-03, Streets and Public Ways, of the Flagstaff City Code, by first declaring said amendments to be a public record; and

WHEREAS, three copies of “*Division 8-03-002, Sidewalk Cafes, Sidewalk Vending Carts and Other Permitted Encroachments*” (Exhibit A attached hereto and made a part hereof) have been deposited in the office of the City Clerk and are available for public use and inspection.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

“*Division 8-03-002, Sidewalk Cafes, Sidewalk Vending Carts and Other Permitted Encroachments,*” (Exhibit A attached hereto and made a part hereof) three complete copies of which are on file in the office of the City Clerk, is hereby declared to be a public record.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 1st day of April, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A**DIVISION 8-03-002: SIDEWALK CAFES, SIDEWALK VENDING CARTS AND OTHER PERMITTED ENCROACHMENTS****SECTION 8-03-002-0001 DEFINITIONS**

- A. Area of Operation means the area of the sidewalk established by the Director within which a business is allowed to operate a sidewalk café.
- B. City Engineer means the City of Flagstaff City Engineer or his or her designee.
- C. Clear Pedestrian Zone is the area reserved for travel. No sidewalk café operations are allowed in this area and the area must meet Federal, State and local accessibility standards and be free of hazards.
- D. Commercial Zone means abutting property which is zoned Central Business (CB), Highway Commercial (HC), Commercial Service (CS), and Community Commercial (CC) of the City of Flagstaff Zoning Code, or any other zone which may be created as a successor zone to such existing commercial zones.
- E. Community Event means an event specifically approved by an individual permit granting use of a street within a specifically defined area for a period of time.
- F. Conduct Business means the act of selling or attempting to sell services, or edible or non-edible items for immediate delivery from a sidewalk vending cart.
- G. Director means the City of Flagstaff Planning Director or his or her designee.
- H. Operate a Sidewalk Café means serving food or beverages from an adjacent café or restaurant to patrons seated at tables located within the sidewalk area adjacent to the café or restaurant.
- I. Permit Operating Area means the sidewalk from the midpoint of one block face to the midpoint of an adjacent block face.
- J. Permittee means the individual who applied for the sidewalk café or sidewalk vending permit and to whom the permit is issued. The permittee bears the ultimate responsibility for the operation of the sidewalk café or, for sidewalk vending carts, the Permit Operating Area.
- ~~J.K.~~ Public Way or Public Right-of Way means public land that has been set aside for the purpose of vehicular and/or pedestrian travel by the public, or other public use, such as utilities, including subsurface, surface, and air rights.
- ~~K.L.~~ Sidewalk means that portion of the street between the curb lines of the roadway and the adjacent property lines intended for use by pedestrians. For purposes of permitting sidewalk cafes, the term "sidewalk" includes Heritage Square, as depicted in the "Declaration of Public Plaza Easement by and between the City of Flagstaff and Flagstaff Heritage Land, LLC" recorded June 5, 1997 in the Official Records of Coconino County as Instrument Number 97-15313. Sidewalk vending carts, as defined herein, are prohibited in Heritage Square.

SECTION 8-03-002-0002 COMMON PERMITTING AND REVIEW PROCEDURES FOR SIDEWALK CAFES, SIDEWALK VENDING CARTS AND OTHER PERMITTED ENCROACHMENTS.

- A. PERMIT REQUIRED FOR SIDEWALK CAFÉ, SIDEWALK VENDING CARTS AND OTHER PERMITTED ENCROACHMENTS

No person shall conduct a business, as herein defined, on City sidewalks, or otherwise encroach upon a City sidewalk, without first obtaining a permit from the City's Community Development Division and paying the appropriate fee(s) to the City of Flagstaff. It shall be unlawful for any person to operate a sidewalk café or sidewalk vending cart on any City sidewalk within the City of Flagstaff, or otherwise encroach upon a City sidewalk, except as provided by this Division.

B. APPLICATION FEE AND LEASE RATE

1. Each application for a sidewalk café, sidewalk vending cart, or other permitted encroachment shall be accompanied by an application fee. Application fees are established by the City's Management Services Director. The application fee is nonrefundable and additional to the lease rate amount. The annual amount of the lease rate shall be collected prior to issuance of the permit. The annual lease rate for a sidewalk café and a sidewalk vending cart regardless of the amount of time used, or other permitted encroachment, shall be determined as set forth in sub-paragraph 2. below.
2. The annual lease rate shall be based on a per square foot calculation of permitted sidewalk areas. The lease rate shall be calculated annually by the Assistant to the City Manager for Real Estate by no later than September 1st of each year. The lease rate, which shall be applied throughout the City of Flagstaff where sidewalk cafes and sidewalk vending carts are permitted, shall be derived by taking the average full cash value as established by the Coconino County Assessor's Office for the 12 properties in the downtown and Southside areas that have historically applied for and operated sidewalk cafes (including Heritage Square), and dividing this value by the area of the parcel. The resultant average land value shall then multiplied by the operating area in sq. ft. and a rate of return value of 25% applied.

C. LIABILITY AND INSURANCE

All permit applications shall be accompanied by a signed statement that the permittee shall hold harmless the City of Flagstaff, its officers and employees, and shall indemnify the City of Flagstaff, its officers and employees for any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability and property damages insurance as will protect permittee and City of Flagstaff from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than \$1,000,000 (one million dollars). Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insured the City of Flagstaff, its officers and employees, the property owner, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the City of Flagstaff.

D. DENIAL, REVOCATION OR SUSPENSION OF PERMIT

1. The Director may deny, revoke, or suspend the permit for any sidewalk café, sidewalk vending cart, or other permitted encroachment if it is found:

- a. That the applicable provisions of this Division have been violated.
 - b. The permittee does not have insurance which is correct and effective in the minimum amount prescribed in Subsection C, above.
2. Upon denial or revocation, the Director shall give notice of such action to the responsible party and permittee in writing stating the action which has been taken and the reason therefor. The action shall be effective upon giving such notice to the permittee. Any denial or revocation may be appealed to the Director by filing within 10 days.
 3. Upon approximately forty-eight hours advance notice, the Director may temporarily suspend the permit in the event of an emergency or if the public interest requires use of the sidewalk permit area for a community event, construction, repair, or any other public purpose. The City will attempt to provide notice of said suspension as soon as practical. The City shall not be responsible for any loss or damage claimed by the permittee for such closure, except that permittee shall be entitled to a refund of the lease rate amount based on a pro rated calculation of rates based on days of closure.

E. RENEWAL OF PERMITS

Application for renewal of permits shall be received from September 1st through December 31st. Application shall be on a form deemed suitable to the Director, accompanied by the application fee and total lease rate amount. Applications received after December 31st shall be processed as new applications. The Director shall review each application to determine that:

1. Any required consent has not been withdrawn.
2. The application has a currently effective insurance policy in the amount provided in Section 8-03-002-0002(C).
3. All required permits are current.
4. All applicable standards have been met. If the Director finds that the application meets all the above requirements, a new permit shall be issued.

F. APPEAL

Any permittee aggrieved by a determination of the Director may appeal that determination to the City Manager. Notwithstanding any other provisions of this Code, there shall be a non-refundable fee of \$250 for any appeal pursuant to this subsection. Such fee must accompany any such appeal and no such appeal shall be considered filed or received until such fee is paid in full.

SECTION 8-03-002-0003 SIDEWALK CAFES

A. PERMIT APPLICATION

Application for a permit to operate a sidewalk café shall be made to the Director at the City of Flagstaff Community Development Division counter, in a form approved by the

Director. In addition to those requirements set forth in Section 8-03-002-0002, above, such application shall include, but not be limited to, the following information:

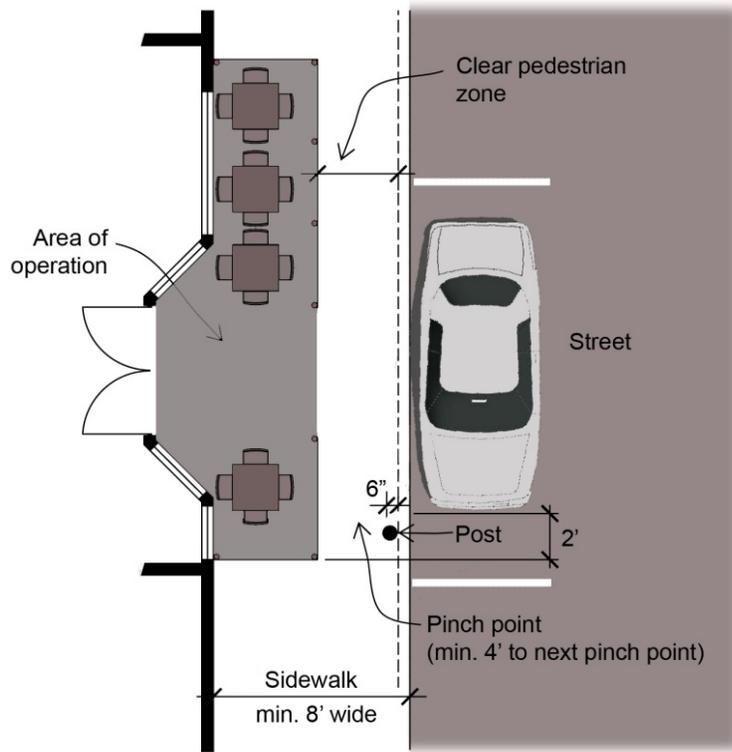
1. Name and address of the applicant.
2. A drawing showing the width of the applicant's café or restaurant facing the sidewalk indicating the area of operation requested to be used, location of doorways; the width of the sidewalk (distance from curb back to building face); locations of tree wells, bus shelters, sidewalk benches, signs, trash receptacles, driveways or curb cuts, or any other semi-permanent or permanent sidewalk obstructions.

B. LOCATION RULES AND REVIEW

1. A sidewalk café shall only be allowed where the sidewalk is at least 8 feet wide and where compliance with the Americans with Disabilities Act can be ensured. Café operations will be allowed only within the area of operation, which shall be established by the Director.
2. The following table shows the minimum width of the clear pedestrian zone for a given sidewalk width. The width of the clear pedestrian zone shall be measured from the back of the curb to the outer edge of the barrier delimiting the boundary of the sidewalk café.

Sidewalk Width	Clear Pedestrian Zone Minimum Width
Greater than or equal to 8' 0" and less than or equal to 10' 0"	5' 6"
Greater than 10' 0" and less than 15' 0"	6' 0"
Greater than or equal to 15' 0"	8' 0"

3. Sidewalk width is determined by the Director's field measurements
4. As a tool to allow compliance in areas with space conflicts a sidewalk café may be allowed pinch points that are less than the required clear pedestrian zone minimum width. At a pinch point, the clear pedestrian zone minimum width may be reduced by 6 inches for a length of no more than 2 feet. Pinch points must be at least 4 feet from adjacent pinch points. Pinch points may be used at the discretion of the Director.
5. Except as allowed in Subsection 4, above, the clear pedestrian zone shall be free of all obstructions, permanent and temporary. This includes objects such as posts, signs, street lights, fire hydrants, bicycle racks, bicycles utilizing bicycle racks, vegetation, trees, tree-wells, planters, literature and news racks, parking meters, bus shelters, benches, tables, chairs, umbrellas, heaters, and waste receptacles.



Location Restrictions for Sidewalk Cafes

6. Obstructions controlled by the café or property owner that extend into/over the clear pedestrian zone shall be at least 8 feet above the sidewalk surface within the clear pedestrian zone.
7. The approved area of operation shall be established by the Director. At all times during the hours of operation of the sidewalk café a barrier or physical separator that can easily be lifted and moved immediately without the assistance of tools shall surround the area of operation. All barriers shall harmonize with the adjacent building's design and be professionally constructed using high-quality durable materials.
8. Barriers must be detectable by cane to warn visually impaired persons of potential hazards in the path of travel. Barriers must include one or more of the following detectable elements:
 - a. A toe rail with its top edge at 6 inches minimum in height and its bottom edge no higher than 1-1/2 inches above the adjacent surface;
 - b. Fencing, landscaping, or other elements detectable by cane spaced no more than 27 inches vertically and no more than 24 inches horizontally; or
 - c. Elements sufficiently detectable by cane to warn visually impaired persons of potential hazards in the path of travel.

C. FORM AND CONDITIONS OF PERMITS

The permit issued shall be in a form deemed suitable by the Director. In addition to naming the name of the business and other information deemed appropriate by the Director, the permit shall contain the following conditions:

1. Each permit issued shall terminate December 31st of the year in which issued.
2. The permit issued shall be personal to the permittee only and is not transferable in any manner.
3. An indemnity provision indemnifying and releasing the City of Flagstaff, its agents, employees and elected officials from any and all liability against any and all claims, actions and suits of any type whatsoever.
4. The permit is specifically limited to the approved area of operation.
5. The permittee shall use positive action to assure that its use of the sidewalk in no way interferes with or embarrasses sidewalk users or limits their free and unobstructed passage.
6. The sidewalk and all things placed thereon shall at all times be maintained in a clean and attractive condition. Trash containers may be provided for use by the sidewalk café patrons.
7. The permit shall be posted in a conspicuous place near the main entrance visible from the sidewalk at all times.
8. All furniture and equipment used in the operation of a sidewalk café shall be removed from the right-of-way within a period of 10 days when not available for use by patrons. Removal of furniture and equipment may be required, on a case by case basis, outside of the business' hours of operation if determined necessary for safety or other reasons including, but not limited to, capital improvement projects, routine maintenance or emergency repairs, at the discretion of the City Engineer. The Flagstaff Police Department or other City departments may provide recommendations for the consideration by the Director.
9. Outdoor cooking shall be prohibited.
10. Smoking within the confines of the permitted area of operation is prohibited.
11. The serving or consumption of alcohol is prohibited within the permitted area of operation between the hours of 2:00 a.m. and 10:00 a.m.
12. No additional advertising or signs of any sort shall be allowed in the permitted area of operation.

SECTION 8-03-002-0004 SIDEWALK VENDING CARTS**A. PERMIT APPLICATION**

An application for a permit to conduct business in a vending cart on a sidewalk shall be made to the Director at the City of Flagstaff Community Development Division counter, in a form approved by the Director. In addition to those requirements set forth in Section 8-03-002-0002, such application shall include but not be limited to the following information:

1. Name and address of the applicant.
2. The expiration of applicant's City business license.

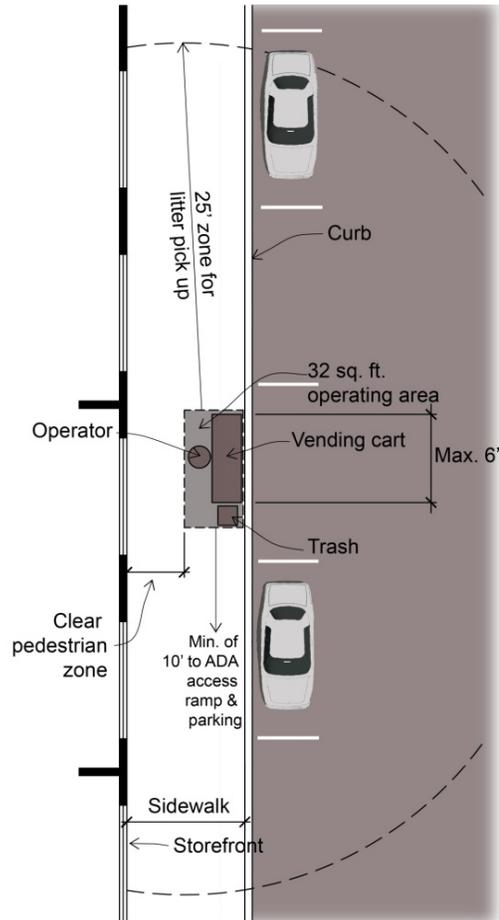
3. Type of items sold or services rendered. Individual applications shall be accepted for one type of product or service only.
4. A valid copy of all necessary permits required by State or local health officials.
5. Means to be used in conducting business including but not limited to a description of any vending cart, to be used for transport or to display approved items or sales.
6. The proposed location for conducting business and the written consent of all directly competing businesses within 145 feet of such proposed location, and 80% of all businesses and owners of real property within 145 feet of such proposed location, along with a signed statement that permittee shall hold harmless the adjacent property owner(s) for any claims for damage to property or injury to persons which may be occasioned by any activity carried on or under the permit. This consent and hold harmless statement must be submitted on a form deemed appropriate by the Director. No application shall apply to more than one location. No application will be accepted for a permit operating area within which a current permit has been issued or an application is pending.
7. No food vendor application will be accepted for a permit operating area where a restaurant, with direct access to the sidewalk, is adjacent or within 100 feet on the same block. Distance is measured from the property line of the restaurant to the nearest part of the permit operating area. Alleys and public ways are included in this measurement. This requirement may be waived if the application is submitted with the written consent of the proprietor of the restaurant. This consent must be submitted on a form deemed appropriate by the Director.

B. LOCATION REVIEW AND RESTRICTIONS

1. Upon receipt of an application for a permit the Director shall review the proposed permit operating area to determine if the said area is suitable for sidewalk vending. In making this determination, the Director shall consider the following criteria:
 - a. The permit operating area shall be within a Commercial Zone.
 - a.b. A sidewalk vending cart shall only be allowed where the sidewalk is at least 8 feet wide and where compliance with the Americans with Disabilities Act can be ensured.
 - b.c. The use of the permit operating area for sidewalk vending must be compatible with the public interest in use of the sidewalk areas as public rights-of-way. In making such determination the Director shall consider the width of the sidewalk, the proximity and location of existing street furniture, including, but not limited to, signposts, lamp posts, parking meters, bus shelters, benches, phone booths, street trees and newsstands, as well as, the presence of bus stops, truck loading zones, taxi stands or hotel zones to determine whether the proposed use would result in pedestrian or street congestion.

The Director shall inform the applicant whether the proposed permit operating area is suitable or unsuitable. In the event the applicant is dissatisfied with the Director's decision regarding a certain application, he/she may appeal the decision pursuant to Section 8-03-002-0002(E).

2. Any person conducting business on the sidewalks of the City of Flagstaff with a valid permit issued under this Division may display/sell items or services upon any vending cart, under or subject to the following conditions:
 - a. The operating area shall not exceed 32 square feet of sidewalk which shall include the area of the vending cart, and, when externally located, the operator and trash receptacle.



Location Restrictions for Sidewalk Vending Carts

- b. The length of the vending cart shall not exceed 6 feet.
 - c. The height of the vending cart, excluding canopies, umbrellas, or transparent enclosures, shall not exceed 5 feet.
3. No person may conduct business on a sidewalk in any of the following places:
 - a. Within the curb return radius except that the Director may waive this restriction in writing for any location upon finding that construction of extra-width sidewalks makes such use consistent with the standards established in Section 8-03-002-0004(F);
 - b. Within 10 feet of any disabled parking space, or access ramp.

4. The sidewalk and all things placed thereon shall at all times be maintained in a clean and attractive condition. All persons conducting business on a sidewalk must pick up any paper, cardboard, wood or plastic containers, wrappers or any litter in any form which is deposited by any person on the sidewalk or street within 25 feet of the place of conducting business. Each person conducting business on a public sidewalk under the provisions of this Division shall carry a suitable container for placement of such litter by customers or other persons.
5. All persons conducting business on a sidewalk shall obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of the sidewalk, or remove his/her vending cart entirely from the sidewalk, if necessary to avoid such congestion or obstruction.
6. No person shall conduct business as defined herein at a location other than that designated on his/her permit.
7. No permittee shall make any loud or unreasonable noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to his/her wares.
8. No permitted vending cart shall be left unattended on a sidewalk nor remain on the sidewalk between the hours of 2 a.m. and 6 a.m.
9. No permittee shall conduct business in violation of the provision of any permit providing for a community event.

C. ITEMS FOR SALE

The Director shall maintain a list of items and services which are either approved or prohibited for sale from sidewalk vending carts. Any item or service not on the list may be considered for approval based on the following criteria:

1. All items or services must:
 - a. Be vended from a regulation size vending cart, see Section 8-03-002-0004(L).
 - b. Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk;
 - c. Involve a short transaction period to complete the sale or render the service;
 - d. Not cause undue noise or offensive odors;
 - e. Be easily carried by pedestrians.

Requests to have an item or service considered for approval shall be submitted in writing to the Director who shall determine whether the item or service conforms to the above criteria. If the item or service conforms to the above criteria, it shall be listed as approved for sale by sidewalk vendors. The decision of the Director, if adverse to the party making the request, may be appealed pursuant to Section 8-03-002-0002(E).

D. FIRE MARSHALL INSPECTION

Prior to the issuance of any permit, the Fire Marshall shall inspect and approve any vending cart to assure the conformance of any heating or cooking apparatus with the provisions of the City of Flagstaff Fire Code.

E. APPLICATION TIME LIMIT

The applicant must complete all reviews, inspections and have presented all required documents to the Director within 60 days from date of location approval. Failure to meet this requirement shall result in cancellation of the application and forfeiture of the application fee. The Director may extend this time limit, upon written request and a finding of reasonable need.

F. FORM AND CONDITIONS OF PERMITS

The permit shall be issued in a form deemed suitable by the Director. In addition to naming the permittee and other information deemed appropriate by the Director, the permit shall contain, but not be limited to, the following conditions:

1. Each permit will expire at midnight, December 31st of the year issued.
2. The permit issued shall be personal to the permittee only and is not transferable in any manner.
3. The permit is valid only when used at the permit operating area designated on the permit. The permit operating area may be changed by submitting a new application and an additional application fee.
4. The permit is valid for one vending cart only.
5. The location within the permit operating area may be changed, either temporarily or permanently, by written notice of the Director.
6. The permittee shall use positive action to assure that its use of the sidewalk in no way interferes with or embarrasses sidewalk users or limits their free and unobstructed passage.
7. The permit is subject to further restrictions as set forth in this Division.

SECTION 8-03-002-0005 OTHER PERMITTED ENCROACHMENTS**A. PERMITTED ENCROACHMENTS BY STRUCTURES.**

The City may issue permits for certain fixed continuing minor encroachments of public ways, or fixed encroachments indefinite as to time or duration, such as awnings, signs, balconies, bay windows, cornices, columns, pillars, shutters, roofs, show windows, ornamental projections, wires across streets, marquees, basement access or porticoes, upon the following conditions:

1. **Overhead Encroachments.** All awnings, signs, balconies, bay windows, cornices, shutters, roofs, show windows, ornamental projections, wires across streets, marquees, porticoes constructed or maintained over or across a right-of-way shall be securely and safely attached to and supported by the structure to which it is attached, and shall extend no closer than 2 feet to a vertical line drawn from the face of the curb. The lowest part of any awning or other such overhead encroachment shall be no closer than 8 feet from the sidewalk surface.

2. Excavations and Other Subsurface Encroachments. The City may issue permits for excavations and other subsurface encroachments subject to the need for installation and maintenance of utilities.
3. Columns and Basement Access. All columns, pillars, basement access or similar structures must, in addition to meeting all other requirements of this Ordinance, be reviewed and approved by the Heritage Preservation Commission.

B. OTHER ENCROACHMENTS FOR THE PLACEMENT OF OBJECTS OR FOR CONSTRUCTION OR REPAIR.

The City may issue permits for temporary encroachments of the public way in all zoning districts, when, in the City's sole discretion, such encroachment may enhance the ambience of the area or may be reasonably necessary in order to conduct exterior repairs to a building, including but not limited to the following:

1. Construction Encroaching into Public Ways. Temporary obstructions and encroachments on public ways in connection with the erection and repair of buildings and other structures may be permitted, provided that such obstructions or encroachment does not interfere unreasonably with the rights of adjacent property owners.
2. Bicycle Parking Racks. Bicycle parking racks shall be placed so the rack and the bicycles parked at the rack do not interfere with accessible paths of travel or accessible parking as required by the American with Disabilities Act of 1990, as amended. All racks must meet the requirements of Sections 10-50.80.050.B.2 and 10-50.80.050.D of the Flagstaff Zoning Code.
3. Potted Plants. All plants, trees, shrubs, and flowers shall be placed in containers that are aesthetically compatible with the downtown area. Said containers shall be constructed in such a manner that no soil, fertilizer or other deleterious material shall leak, leach or spill onto the public sidewalk. In the interest of pedestrian safety and to accommodate snow removal operations, potted plants shall be removed from the sidewalk area no later than October 31st and placed no earlier than May 1st of each year.
4. Newspaper Vending Machines. Notwithstanding anything to the contrary contained herein, an encroachment permit shall not be required for newspaper vending machines. Such vending machines shall nonetheless be placed in a manner to allow for the safe and unrestricted use of the sidewalk by the public and shall be placed a minimum of 2 feet from the face of curb. Any regulation or restriction on the placement of newspaper vending machines shall be location-specific and shall apply to all such machines equally.
5. Mailboxes. Notwithstanding anything to the contrary contained herein, an encroachment permit shall not be required for mail receptacles owned by the U.S. Postal Service.

C. PERMIT APPLICATION

Application for a permitted encroachment shall be made to the City Engineer at the City of Flagstaff Community Development Division counter, in a form approved by the City Engineer. In addition to those requirements set forth in Section 8-03-002-0002, such application shall include, but not be limited to, the following information:

1. Name and address of the applicant.
2. A drawing showing the width of the applicant's encroachment indicating the area requested to be used, location of doorways; the width of the sidewalk (distance from curb back to building face); locations of tree wells, bus shelters, sidewalk benches, signs, trash receptacles, driveways or curb cuts, or any other semi-permanent or permanent sidewalk obstructions.

SECTION 8-03-002-0006 PENALTY FOR VIOLATION

- A. Knowingly encroaching upon a City sidewalk without a permit shall be considered a misdemeanor offense, subject to the sanctions set forth in Chapter 1-04, General Penalties.
- B. The Director is authorized to issue a citation to any person violating the provisions of this Division. Issuance of a citation shall trigger revocation of the permit under Section 8-03-002-0002(D) and, in the event of conviction, no permit shall be issued to the same person, entity or address, for a period of at least two years.

SECTION 8-03-002-0007 SUMMARY ABATEMENT

If the condition of any sidewalk café, sidewalk vending cart, or other permitted encroachment located on a City sidewalk or within a public way is such that it creates a risk of serious injury to persons or property, the Director is authorized to pursue summary abatement of the condition and to charge against the permittee the full costs of such abatement.