



Julie Menin
Commissioner

[REDACTED]
Executive Deputy General
Counsel

[REDACTED]
42 Broadway
8th Floor
New York, NY 10004

[REDACTED]
nyc.gov/consumers

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LEGAL INTERPRETATION: Awnings and Sidewalk Cafes

The New York City Department of Consumer Affairs (the "Department" or "DCA") issues this interpretation in response to multiple inquiries concerning whether Section 2-55(c) of Title 6 of the Rules of the City of New York ("RCNY") prohibits all non-retractable awnings within the footprint of an unenclosed sidewalk cafe. The Department concludes that 6 RCNY § 2-55(c) does not prohibit the maintenance of a fixed awning that extends up to three feet over the public sidewalk within the footprint of an unenclosed sidewalk café.

Section 2-55 sets forth the physical criteria for licensed unenclosed sidewalk cafes. Subdivision "c" of section 2-55 prescribes the criteria for awnings, providing:

The awning shall be adequately secured, *retractable* and made of non-combustible frame covered with flame-proofed canvas or cloth, slow-burning plastic or other equivalent material, as approved by the New York City Department of Buildings, but not including glass. At no point shall the height of the awning of an unenclosed sidewalk cafe, including the valence of the awning, be lower than seven feet zero inches from the floor of the sidewalk cafe. The valence of the awning shall not be more than twelve inches high. 6 RCNY § 2-55(c)(emphasis supplied).

The NYC Department of Buildings ("DOB") requires a permit for an awning installation. Its rules allow both fixed and retractable awnings. Many New York City businesses maintain window awnings. Some are installed to increase energy efficiency by shielding the interior of a building from sunlight. Other awnings are purely decorative. Restaurants sometimes install awnings that cover all or a substantial portion of an unenclosed sidewalk café to provide protection for diners from sunlight, precipitation or other natural elements, or from manmade irritants, such as air conditioner leakages.

The requirement that an awning which extends over a sidewalk café be retractable is intended to minimize the encroachment of the sidewalk café into the public sidewalk and to ensure that an unenclosed sidewalk café as a practical matter is not converted into an enclosed sidewalk cafe.¹ A fixed awning that extends over the sidewalk no farther than three feet will not typically cover the footprint of the smallest sidewalk café, which, including the required three-foot service aisle, will usually extend at least four feet onto a public sidewalk. Several other provisions in the sidewalk café rules are similarly designed to ensure that an unenclosed sidewalk café can be removed from the sidewalk on short notice or during the off-season. For example, pursuant to 6 RCNY§ 2-55(a), a railing or other barrier separating a café from the part of the sidewalk used by pedestrians cannot be bolted or otherwise permanently fixed to the sidewalk.

¹ Certain fixed items are permitted under an enclosed sidewalk café license, which requires the approval by additional city agencies and which imposes higher fees.



The Department concludes that the requirement in 6 RCNY § 2-55(c) that an awning be retractable does not to prohibit small fixed awnings which intrude minimally over the public sidewalk. Accordingly, the Department interprets 6 RCNY § 2-55(c) not to prohibit the maintenance of a fixed awning extending up to three feet over the sidewalk within the footprint of a sidewalk cafe. An awning extending more than three feet over the sidewalk must be retractable pursuant to 6 RCNY § 2-55(c). All awnings must still comply with requirements enforced by the DOB or any other governmental entity.