



Jonathan Mintz
Commissioner

42 Broadway
8th Floor
New York, NY 10004

212 436-0330 tel
nyc.gov/consumers

November 27, 2013

BY E-MAIL

(by e-mail at [REDACTED])

RE: Sidewalk Café Premises to be Used for Sale of Coniferous Trees

Dear [REDACTED]:

This is in response to your inquiry in which you ask whether a sidewalk café licensed by the NYC Department of Consumer Affairs (“the Department”) may, during the months of November and December, temporarily suspend its sidewalk café activities and use the sidewalk upon which it is located to sell holiday trees and hot cider. The short answer is that the sidewalk café may sell coniferous trees in December only, and may not sell hot cider unless it is approved for a food vendor license by the NYC Department of Health and Mental Hygiene.

Section 19-136(4) of the NYC Administrative Code (“Code”) states that “[s]torekeepers and peddlers may sell and display coniferous trees during the month of December...but in any such case the permission of the owner of the premises fronting on such sidewalk shall be first obtained and a passageway shall be kept open on the sidewalk so obstructed for the free movement of pedestrians.” Thus, a licensed sidewalk café may suspend its sidewalk café activities and use the sidewalk where it is located to sell coniferous trees in the month of December only, and upon first obtaining permission from the owner of the premises fronting the sidewalk. Further, when displaying the trees for sale, an open passageway must be maintained for the free movement of pedestrians.

You also ask whether the sidewalk may be used to sell hot cider. The NYC Department of Health and Mental Hygiene enforces the provisions governing the sale of food by food vendors. Specifically, the Code Section 17-307(a)(1) states that “[i]t shall be unlawful for any individual to act as a food vendor without having first obtained a license therefor from the commissioner” of the NYC Department of Health and Mental Hygiene. The Code Section 17-306(c) defines a food vendor as “[a] person who hawks, peddles, sells or offers food for sale at retail in any public space,” and Section 17-306(b) includes “beverages” in the definition of food. Thus, the sidewalk upon which the sidewalk café normally operates may not be used to sell hot cider unless a license to act as a food vendor is first obtained from the NYC Department of Health and Mental Hygiene. Visit their website at www.nyc.gov/health for more information about how to obtain a



food vendor license.

Finally, if a sidewalk café suspends its sidewalk café activities in December to sell coniferous trees, the sidewalk café must continue to pay its consent fees associated with its use of the sidewalk pursuant to the Code Section 20-226(h).

Sincerely,

[Redacted signature]

[Redacted contact information]