



**EMERGENCY ORDINANCE
TO DECREASE THE RISK OF EXPOSURE TO COVID-19
IN RESTAURANTS AND
TO AUTHORIZE THE USE OF NEW OR ADDITIONAL SPACE
FOR OUTDOOR DINING
(AS AMENDED)**

Section 1. Findings. City Council does hereby make the following findings:

WHEREAS, in December 2019, an outbreak respiratory illness due to a novel coronavirus (COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, across the world, including the United States; and,

WHEREAS, it is well recognized that COVID-19 presents a public health concern that requires extraordinary protective measures and vigilance; and,

WHEREAS, on January 23, 2020, the Center for Disease Control (“CDC”) activated its Emergency Response System to provide ongoing support for the response to COVID-19; and,

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency to assist with combating the coronavirus, and,

WHEREAS, on March 13, 2020, Governor Henry McMaster (the “Governor”) declared a state of emergency in South Carolina, Executive Order 2020-10, based on a determination that “COVID-19 poses an actual or imminent public health emergency”; and,

WHEREAS, on March 16, 2020, Mayor John J. Tecklenburg declared a local state of emergency in the City of Charleston; and,

WHEREAS, on March 16, 2020, City Council passed a temporary emergency ordinance (Ordinance No. 2020-038) to prohibit consumer price gouging on all commodities in the City of Charleston with limited exceptions; and,

WHEREAS, on March 16, 2020, City Council passed a temporary emergency ordinance (Ordinance No. 2020-040) suspending the requirements of 2-23(f) requiring the physical presence

of Councilmembers at City Council meetings and committee meetings to permit participation by video conferencing or other virtual means to slow the spread of covid-19; and,

WHEREAS, on March 17, 2020, the Governor issued Executive Order 2020-10, ordering and directing that any and all restaurants or other food-service establishments to suspend on-premises or dine-in consumption; and,

WHEREAS, on March 20, 2020, City Council passed a temporary emergency ordinance (Ordinance No. 2020-041) to temporarily suspend the accrual of the City’s business license penalties, to suspend enforcement of the City’s plastic bag ban, and to suspend the City’s chauffeur’s license requirements; and,

WHEREAS, on March 21, 2020, the Governor issued Executive Order 2020-13, authorizing and directing law enforcement officers to prohibit or disburse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in his or her discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and,

WHEREAS, on March 24, 2020, City Council passed a temporary emergency ordinance, “Stay at Home Ordinance” (Ordinance No. 2020-042) which required individuals to stay in their homes and not travel or congregate in the streets of Charleston except for purposes of working at or conducting business with an essential business or engaging in individual outdoor recreational activities; and,

WHEREAS, on March 27, 2020, the Governor issued Executive Order 2020-14, directing that individuals who enter the State of South Carolina from an area with a substantial community spread of COVID-19 be required isolate or self-quarantine; and,

WHEREAS, on March 28, 2020, the Governor issued Executive Order 2020-15, declaring a separate and distinct state of emergency “due to the evolving nature and scope of the public health threat or other risks posed by COVID-19 and the actual, ongoing, and anticipated impacts associated with the same” and extending certain previous Executive Orders for the duration of the state of emergency; and,

WHEREAS, on March 30, 2020, the Governor issued Executive Order 2020-16, closing any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings; and,

WHEREAS, on March 31, 2020, the Governor issued Executive Order 2020-17, closing or restricting access to certain non-essential businesses, venues, facilities, services, and activities; and,

WHEREAS, on April 1, 2020, City Council passed a Stay at Home Ordinance (Ordinance No. 2020-048) which includes provisions contained in Governor McMaster’s executive orders

regarding dispersing of crowds (2020-13); quarantining of individuals from New York, New Jersey, and Connecticut (2020-14); closing of beaches and boat landings (2020-16) and closing of non-essential businesses (2020-17); and,

WHEREAS, on April 3, 2020, Governor Henry McMaster issued an Executive Order (2020-18) closing additional non-essential businesses; and,

WHEREAS, on April 6, 2020, Governor Henry McMaster, recognizing that public health officials had reported over 2,000 cases of COVID-19 in South Carolina, issued a Work or Home Executive Order (2020-21) which limited individuals from moving outside their homes except to engage in Essential Businesses; Essential Activities, and Critical Infrastructure Operations as defined in the Order; and,

WHEREAS, on April 6, 2020, City Council passed a temporary emergency ordinance (Ordinance No. 2020-042) to provide for temporary procedures for public hearings; and,

WHEREAS, on April 12, 2020, the Governor issued Executive Order 2020-23, recognizing that public health officials had reported over 3,319 confirmed cases of COVID-19 throughout South Carolina, and stating that “the extraordinary circumstances and conditions that necessitated” the Governor’s “prior emergency declarations have not subsided and have, in fact, evolved and expanded to present different and additional risks and dangers,” and explaining that the State “has transitioned from the investigation, reporting, and initiation phases of the COVID-19 pandemic to the acceleration phase”; and,

WHEREAS, in Executive Order 2020-23, the Governor declared a separate and distinct state of emergency based on a determination “that the accelerated spread of COVID-19 throughout the State poses an actual, ongoing, and evolving public health threat to the State of South Carolina, which now represents a new and distinct emergency and requires additional proactive action by the [State] and the implementation and enforcement of further extraordinary measures to slow the spread of COVID-19, minimize the strain on healthcare providers, and otherwise respond to and mitigate the expanding public health threat imposed by [the] emergency”; and,

WHEREAS, on April 16, 2020, the Governor issued Executive Order 2020-25, determining that “the ongoing, evolving, and accelerating public health threat imposed by COVID-19 requires additional proactive action by the [State] and the implementation, extension, or modification of additional extraordinary measures to cope with the existing or anticipated situation, to include mitigating the significant economic and other impacts and burdens on individuals, families and businesses,” while generally reopening public boat ramps or boat landings, as well as adjacent or associated public parking lots, for the purpose of launching and retrieving boats; and,

WHEREAS, on April 16, 2020, President Donald Trump issued guidelines entitled “Opening Up America Again,” describing criteria that state and local officials should satisfy before proceeding to a phased opening of the economy; and,

WHEREAS, on April 20, 2020, Governor McMaster issued an Executive Order (2020-28), reopening retail businesses previously determined to be non-essential including department

stores, furniture stores, luggage stores, flower shops, book, craft and music shops subject to certain emergency rules and restrictions, including but not limited to an emergency maximum occupancy rate, social distancing practices, and compliance with certain sanitation guidelines and further ordered any local ordinance that conflicts with the Order is superseded; and,

WHEREAS, on April 22, 2020, City Council passed a temporary emergency ordinance (Ordinance No. 2020-052) to decrease the potential likelihood of exposure to COVID-19 in retail establishments opened by Governor McMaster's Executive Order 2020-28; and,

WHEREAS, on April 30, 2020, City Council passed a temporary emergency ordinance (Ordinance No. 2020-056) to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) by amending the Design Review District Section 54-268.c to allow affordable housing developments to be approved by the Administrative Officer; and,

WHEREAS, on May 1, 2020, by Executive Order No. 2020-30 the Governor rescinded Executive Order Nos. 2020-14 and 2020-19 which had imposed mandatory self-quarantine and lodging and travel restrictions for individuals entering South Carolina from high-risk areas; and,

WHEREAS, on May 3, 2020, by Executive Order No. 2020-31, the Governor modified the Home or Work Order to no longer require but encourage citizens and visitors to limit their movements outside of their residence for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure; and further, to authorize outdoor dining services; and,

WHEREAS, on May 7, 2020, the total number of cases of persons infected with COVID-19 in South Carolina is 7142, with 316 deaths; including 467 cases in Charleston County with 9 deaths and 189 cases in Berkeley County with 14 deaths; and,

WHEREAS, on May 8, 2020, the Governor issued Executive Order No 2020-34 which authorized restaurants to provide services for limited indoor, on-premises customer dining, effective Monday, May 11, 2020, in addition to previously authorized services for off-premises consumption and outdoor customer dining; and

WHEREAS, University of Harvard health experts have stated that they cannot rule out the possibility of the COVID-19 infection being transmitted through food by an infected person who has not thoroughly washed their hands; and,

WHEREAS, in an effort to protect customers and employees, owners and operators of retail businesses engaged in serving food and beverage who open their establishments to the public or for private events during the state of emergency in the City of Charleston shall operate in a safe manner and reduce the potential risk of exposure to the spread of COVID-19 as set forth in this Ordinance and in accordance with CDC guidance for Restaurants and Bars and the South Carolina Restaurant and Lodging Association; and,

WHEREAS, section 45-3-10 of the South Carolina Code authorizes the City to provide by ordinance such rules and regulations regarding the conduct and operation of hotels, restaurants,

cafes, and lunch counters within the City as to provide for the public health, comfort and convenience; and,

WHEREAS, to stimulate the recovery of the restaurant business in the City and to support local restaurants, City Council has determined that certain provisions of the City’s ordinances prohibiting serving food and drink outdoors on private property and on City sidewalks should be temporarily suspended, as set forth further herein.

Section 2. Outdoor Dining Services. The following provisions apply to new or additional areas sought to be utilized for outdoor dining services:

A. Definitions.

1. Outdoor Dining Services. “Outdoor dining services” means services covered by a temporary outdoor dining approval and/or a temporary sidewalk dining permit.
2. Restaurant. “Restaurant” shall have the meaning set forth in Section 4 of the Governor’s Executive Order No. 2020-10.
3. Sidewalk Dining. “Sidewalk dining” means a portion of an immobile retail food establishment located on a designated public right-of-way immediately adjacent to the retail food establishment.
4. Sidewalk Dining Elements. “Sidewalk dining elements” means any and all tables, chairs, tents, umbrellas, planters, heaters, and other objects associated with sidewalk dining.
5. Temporary Outdoor Dining Approval. Temporary outdoor dining approval authorizes a restaurant to temporarily utilize new or expanded outdoor dining areas on private property.
6. Temporary Sidewalk Dining Permit. A temporary sidewalk dining permit is a permit temporarily authorizing a restaurant to engage in sidewalk dining within a designated area on a public right-of-way.

B. Temporary Suspension of Regulations Governing Outdoor Dining Areas and Sidewalk Dining. The following regulations temporarily shall supersede and replace any conflicting provisions of the City’s zoning ordinances or regulations governing outdoor dining services. All applicants for temporary outdoor dining approval shall follow the procedures set forth in Section 2.C and the comply with the standards set forth in Section 2.D. All applicants for a temporary sidewalk dining permit shall follow the procedures set forth in Section 2.E, comply with the design and layout standards set forth in Section 2.F, and comply with the operational standards set forth in Section 2.G.

C. Temporary Outdoor Dining Approval. Any restaurant desiring to offer outdoor dining services on private property shall first apply to the Zoning Division and provide all information deemed necessary by the City's Zoning Administrator. The Zoning Administrator is hereby authorized and directed to generate standard application forms and adopt internal procedures for such purpose.

D. Standards for Temporary Outdoor Dining Areas. Restaurants desiring temporary outdoor dining approval on private property shall comply with the following standards:

1. The restaurant shall be properly licensed by appropriate state and local agencies to perform any activities, sales, and services.
2. The restaurant shall comply with all applicable laws relating to litter, noise, and other livability matters. In addition to the foregoing, no amplified music shall be permitted in outdoor dining areas. The Zoning Administrator may impose additional conditions or limitations relating to noise on the restaurant when the Zoning Administrator finds that such additional conditions or limitations are necessary or appropriate based on the location of the new or additional outdoor dining area and the proximity of such area to residential areas, including without limitation existing residences, existing residential neighborhoods, and residentially-zoned properties.
3. Unless authorized as part of a sidewalk dining permit, outdoor dining areas shall not encroach within any public rights-of-way.
4. Outdoor dining areas shall not encroach into or interfere with required handicapped parking spaces.
5. Outdoor dining areas shall not interfere with safe pedestrian and vehicular access or access required to be maintained under the Americans with Disabilities Act.
6. Outdoor dining areas shall not encroach within or interfere with fire and other emergency access.
7. Any sales and/or consumption of food and/or alcoholic beverages shall be in compliance with the provisions of any federal, state, and/or local laws and regulations governing same.
8. Outdoor dining areas shall comply with all applicable occupancy requirements or other provisions of the fire code.
9. The Zoning Administrator may impose other conditions or limitations on a restaurant to protect against adverse impacts from noise, traffic, parking, fire, people with disabilities, and travel.

E. Temporary Sidewalk Dining Permit. The following procedures shall apply to temporary sidewalk dining permits:

1. Application. Any restaurant desiring a temporary sidewalk dining permit shall first apply to the Zoning Division and provide all information deemed necessary by the Zoning Administrator. The Zoning Administrator is hereby authorized and directed to generate standard application forms and adopt internal procedures for such purpose. Without limiting the foregoing, the Zoning Administrator may require a layout sketch or site plan and a minimum of two (2) photographs showing all sidewalk dining elements, utilities, sidewalks, and appropriate measurements with the application.
2. Effect. The following terms and conditions shall apply to any temporary sidewalk dining permit issued by the City under this Ordinance:
 - a. The permit is for a permissive use only and the issuing of the permit shall not operate to create or vest any property rights in the permittee.
 - b. The City shall have free and complete access to the public right-of-way (the "ROW") in which sidewalk dining has been permitted for maintenance and repair of the ROW, and the permittee shall hold harmless the City for any damage that may be done by the City during maintenance and repair of the ROW.
 - c. The permittee shall maintain the sidewalk easement area in a good and safe condition as long as the temporary sidewalk dining permit remains in effect. Permittee understands and acknowledges that, should the permittee, its agents, employees, vendors, or patrons, damage and/or disturb the ROW and/or the sidewalk dining area, the permittee shall be solely responsible for repairing the destroyed/disturbed ROW and the sidewalk dining area to the City's satisfaction.
 - d. Permittee shall maintain a general liability insurance policy with combined single liability limits for personal injury or death and property damage in the amount of the liability limits set forth in the South Carolina Tort Claims Act, naming the City as an additional insured. The permittee agrees to provide proof of such policy to the City upon request.
 - e. If alcoholic beverages will be served within the sidewalk dining area, the permittee shall maintain liquor liability insurance for the area under the same terms and conditions as those applying to general liability insurance.
 - f. Permittee shall indemnify, defend, and hold harmless the City against any and all claims or suits for damages or injury arising from permittee's

or the permittee's agents', employees', vendors', and/or patrons' use of the ROW or the sidewalk dining area or from any activity, work, or act done, permitted, or suffered by permittee in or about the sidewalk dining area, and shall further indemnify, defend, and hold harmless the City against and from any and all claims or suits arising from any breach or default of any performance of any obligation of permittee under this Ordinance or the sidewalk dining permit, and against and from all costs, attorneys' fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

- g. Permittee shall not assign the sidewalk dining permit without the prior approval of the City.
 - h. Any unlawful encroachments existing in the ROW shall be subject to removal and the permittee shall be responsible for labor and costs associated with such removal. Any encroachments existing in the public ROW shall be removed upon twenty-four (24) hours' notice given by the department of public service when such removal is necessary to repair or improve the ROW. If it is necessary to remove any encroachments, including but not limited to sidewalk dining elements, the permittee shall be responsible for labor and costs associated with removal and reinstallation.
 - i. In the event that the City police, fire, public service or traffic and transportation departments determine that the location of an encroachment, including but not limited to sidewalk dining elements, constitutes an immediate physical danger to life, safety or health, the encroachment may be removed immediately without prior notice. If the City removes an encroachment, a notice of removal shall be sent to the permittee as soon as practicable under the circumstances. Any abandoned encroachment shall be subject to removal. For purposes hereof, 'abandoned' shall mean the vacating of the premises by the permittee for a period of seven (7) consecutive days or more. Any costs incurred to the City in restoring the public ROW to the condition that existed prior to the use of the sidewalk dining area shall be the responsibility of the permittee.
3. Inspection. The Zoning Administrator may perform or caused to be performed a site inspection of the area to be utilized for sidewalk dining to verify compliance with the requirements set forth herein prior to issuing a temporary sidewalk dining permit. The City of Charleston's Fire Department, Fire Marshal, Police Department, Building Inspections Division, Livability Code Enforcement Officers, and Zoning officers shall be authorized to inspect and determine whether applicants and permittees comply with and continue to comply with the rules and regulations governing sidewalk dining set forth herein, as may be amended.

4. Decision. The Zoning Administrator is hereby authorized, after any necessary consultation with other City departments, to issue temporary sidewalk dining permits upon finding that the application meets all standards set forth in Section 2.F.
5. Posting. The temporary sidewalk dining permit shall be posted on the premises so as to be visible from the public right-of-way during all times that sidewalk dining is being conducted within the public right-of-way.

F. Design and Layout. The following standards shall govern the design and layout for sidewalk dining:

1. The width of the sidewalk dining area shall not exceed the width of the frontage of the restaurant's property.
2. Permittees shall maintain a clear pedestrian path of at least six feet (6') at all times; provided, however, in areas of higher pedestrian traffic or activity, or in conditions that suggest the need for additional clearance, the Zoning Administrator may require a clear pedestrian path greater than six feet (6'). Any such clearance area must be free of all obstructions such as trees, parking meters, utility poles, fire hydrants, and similar encroachments in order to allow for adequate pedestrian movement. All services and patron activity provided within the designated public right-of-way shall occur within the designated area and shall not encroach within the minimum clearances for pedestrian passage at any time.
3. Sidewalk dining and sidewalk dining elements shall not interfere with any utilities or other facilities such as utility poles, fire hydrants, signs, parking meters, mailboxes, and/or benches within the sidewalk or within the public right-of-way.
4. Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct any required clearance for maneuvering around entrances or exits.
5. Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct any areas required for accessibility for disabled persons, whether patrons or employees.
6. Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct required ingress and/or egress for adjacent buildings set forth in the building code or otherwise.
7. Sidewalk dining and sidewalk dining elements may not violate the vision clearance requirements set forth in Section 54-351 of the City Code.

8. Vision clearance will also be required when sidewalk dining or sidewalk dining elements are located adjacent to an alley or driveway; provided, however, the Zoning Administrator is authorized to modify such requirements when unusual circumstances exist or when public safety may be jeopardized.
9. Signs advertising the sale of food, beverages, goods, or services without sidewalk dining areas shall be prohibited. This prohibition includes but is not limited to sandwich boards, banners, pamphlets, podiums, or any other advertisements. Nothing herein shall prohibit the posting of any signage required by the City.
10. No amplified music, whether live or recorded, shall be permitted within sidewalk dining areas. No speakers, microphones, televisions or other audio or video devices shall be permitted within sidewalk dining areas.
11. No vending machines, carts, or objects for the sale of goods shall be permitted within sidewalk dining areas.

G. Standards for Sidewalk Dining. Restaurants obtaining a temporary sidewalk dining permit shall comply with the following operational standards:

1. The standards for temporary outdoor dining approval in Section 2.D.
2. Sidewalk dining is prohibited between 12:00 a.m. and 7:00 a.m., unless the permitted hours are more restrictive under the existing zoning applicable to the property, use, or activity, in which case the more restrictive hours shall control.
3. Any and all tables, chairs, umbrellas, planters, heaters, and other objects associated with the sidewalk dining (the "Sidewalk Dining Elements") shall be removed from the public right-of-way except during the restaurant's daily operations. The storage of sidewalk dining elements within the public right-of-way at any time is prohibited. The leaving of sidewalk dining elements in public rights-of-way at any time before or during daily operations is also prohibited.
4. If alcoholic beverages are served within the designated public right-of-way, the permittee must have a valid license under all applicable laws for such sales. Alcoholic beverages supplied by the customer or by any other person other than the permittee shall not be allowed within the designated public right-of-way. No alcoholic beverages may be stored or mixed within the designated public right-of-way.
5. The permittee must require patrons dining within the designated public-right-of-way to wear shoes and shirts at all times.
6. All employees must comply with applicable requirements and standards for a retail food establishment.

7. The permittee must comply with all federal, state, and local laws, rules, and regulations applicable to the operation of sidewalk dining within the City.

H. Administrative Suspension/Modification. Any temporary outdoor dining approval and/or sidewalk dining permit is subject to suspension, modification, or amendment at any time with or without notice based on a determination that additional conditions or limitations shall be required to protect against adverse impacts associated with new or expanded area. City Council may suspend, modify, or amend the provisions governing outdoor dining services at any time by emergence ordinance, in which case all restaurants shall comply with any such modifications or amendments, whether or not they previously received an approval or permit hereunder. All approvals and permits governed by this Ordinance shall automatically expire on July 11, 2020 at 11:59:59 p.m., unless such approval or permit is otherwise suspended, modified, amended, or extended in accordance with this Ordinance or a subsequent ordinance adopted by City Council.

I. Appeal. Any decision of the Zoning Administrator under this Ordinance may be appealed to the Board of Zoning Appeals-Zoning (“BZA-Z”), in accordance with the standards governing appeals from administrative officers under state law and the City’s Zoning Ordinance.

Section 3. Restaurant owners/operator are responsible for ensuring that the procedures and standards set forth in this Ordinance are followed or otherwise cease services. Pursuant to section 45-3-30 of the South Carolina Code, the City may deny or revoke any license granted to conduct any such business when, in the judgment of the City, the business is not complying with this Ordinance and shall be subject to the penalties set forth in Section 1-16 of the City Code.

Section 4. Pursuant to section 45-3-20 of the South Carolina Code, the City of Charleston Fire Department, Office of the Fire Marshal, Police Department, Building Inspections Division, and their designees, Livability Code Enforcement Officers, and Zoning Officers are hereby authorized to inspect and determine whether businesses are in compliance with this Ordinance. Any person who shall refuse to allow such inspection or who shall obstruct any officer whose duty it is to make such inspection shall be subject to the penalties set forth in section 45-3-20.

Section 5. This Ordinance shall become effective upon enactment and shall expire on July 12, 2020, unless otherwise modified, amended, extended, or rescinded by a subsequent City Ordinance to protect the health, safety, and welfare of the City of Charleston.

Ratified in City Council this _____ day of _____ in the Year of Our Lord, 2020, and in the _____th Year of the Independence of the United States of America.

By: _____
John J. Tecklenburg
Mayor, City of Charleston

ATTEST: _____
Vanessa Turner Maybank
Clerk of Council