AN ORDINANCE

TO AMEND CHAPTER 54 OF THE CODE OF THE CITY OF CHARLESTON (ZONING ORDINANCE) BY CHANGING PART 4 (ACCESSORY USES) OF ARTICLE 2 (LAND USE REGULATIONS) TO ADD A NEW SEC. 54-215 (OUTDOOR DINING SERVICES) TO AUTHORIZE THE USE OF NEW OR ADDITIONAL SPACE FOR OUTDOOR DINING SERVICES (AS AMENDED).

INCIDENT TO THE ADOPTION OF THIS ORDINANCE, CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT:

1. The food and beverage industry has played a vital role in the growth of Charleston, economically and in other respects. The food and beverage industry within the City has substantially contributed to the City becoming the number one tourist destination in the world.

2. The COVID-19 pandemic has had a devastating impact on the food and beverage industry in the City. Owners and employees of restaurants and similar establishments in the City were the first to close their doors—many voluntarily—at the beginning of the pandemic. Even after closing their doors to public gatherings, many food and beverage establishments have continued to serve the City and its residents by remaining open for take-out orders or setting up delivery services. The City recognizes the tremendous moral obligation owed to such owners and their employees, many of whom also reside in the City, for their significant sacrifice during these very difficult times.

3. Notwithstanding the unmistakably positive economic impact that the City’s food and beverage industry has had on the City, such establishments also have a significant positive impact on the health and welfare of the City’s residents. In fact, this time of unprecedented isolation emphasizes the important role of the City’s food and beverage establishments in bringing people together, helping people celebrate life’s blessings; sympathize in life’s difficulties; reinforce relationships with existing friends and family; reacquaint with old friends; and meet new ones. The City’s food and beverage establishments create and solidify the social, business, political, religious, civic, and familial relationships reflected in the City’s unique culture.

4. A full recovery of the City’s food and beverage industry after the demise of the current pandemic is critical to the full recovery of the health, welfare, culture, and economy of the City and its residents.
5. The City should maximize outdoor dining opportunities by food and beverage establishments, while minimizing adverse impacts from, among other things, overcrowding, noise, and traffic on residential areas and on the public rights-of-way within the City.

6. Such a policy serves a compelling government interest by substantially increasing the ability of the City’s food and beverage establishments to remain open during the current pandemic and to fully recover after the pandemic subsides, preserving the important positive impact of such establishments on the health, welfare, culture, and economy of the City.

NOW, THEREFORE, BE IT ORDAIN BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That Part 4 (Accessory Uses) of Article 2 (Land Use Regulations) of Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) is hereby amended by adding the following new Sec. 54-215 (Outdoor Dining Services) thereto:

Sec. 54-215. – Outdoor Dining Services. The following provisions apply to new or additional areas sought to be utilized for outdoor dining services:

A. Definitions.

(1) Expiration Date. “Expiration Date” means January 10, 2022 at 11:59:59 p.m.

(2) Outdoor Dining Services. “Outdoor dining services” means services covered by a temporary outdoor dining approval and/or a temporary sidewalk dining permit.

(3) Residential Area. “Residential Area” means any property within a residential zoning district.

(4) Restaurant. “Restaurant” means an operation that prepares, processes, packages, serves, or otherwise provides food for human consumption, either on or off the premises, regardless of whether there is a charge for the food; provided, however, the term “restaurant” shall not include grocery stores, pharmacies, convenience stores, gas stations, school cafeterias, independent living food service operations, licensed healthcare facilities, retail meat markets, fish/seafood markets, retail ice merchants, or mobile food establishments.

(5) Sidewalk Dining. “Sidewalk dining” means a portion of an immobile restaurant located on a designated public right-of-way immediately adjacent to the restaurant.

(6) Sidewalk Dining Elements. “Sidewalk dining elements” means any and all tables, chairs, tents, umbrellas, planters, heaters, and other objects associated with sidewalk dining.

(7) Temporary Outdoor Dining Approval. A temporary outdoor dining approval authorizes a restaurant to temporarily utilize new or expanded outdoor dining areas on private property.

(8) Temporary Sidewalk Dining Permit. A temporary sidewalk dining permit authorizes 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; provided, however, nothing herein supersedes or replaces conflicting provisions of the City’s zoning ordinances or regulations with respect to new development, redevelopment, construction, or improvement of property.

C. **Applications.** Any restaurant desiring to offer outdoor dining services shall first apply to the Zoning Division on forms created for that purpose. All information required to show compliance with the standards for outdoor dining services under this Section shall be included with the application. The Zoning Administrator is hereby authorized and directed to generate standard application forms and adopt internal procedures for such purpose.

D. **Special Exception.** The location of outdoor dining services within 150 feet of a residential area is generally disfavored and shall not be granted except upon a special exception approved by the Board of Zoning Appeals-Zoning (“BZA-Z”). The BZA-Z may approve, approve with modifications, approve with conditions, or disapprove an application for outdoor dining services within 150 feet of a residential area after considering the application, the relevant supporting materials, any staff recommendation, and the evidence presented at the hearing. Prior to granting a special exception under this Section, the BZA-Z shall find as follows:

1. **Compliance with Standards.** The proposed special exception complies with the specific standards applicable to the request set forth in this Sec. 54-215.

2. **Compatibility.** The proposed special exception is appropriate for its location and compatible with the character of surrounding lands and the uses permitted in the zoning districts of surrounding lands, and will not reduce property values of surrounding lands.

3. **Design does not have substantial adverse impact.** The design of the proposed special exception minimizes adverse effects, including visual impacts of the proposed use on adjacent lands; furthermore, the proposed special exception does not impose significant adverse impact on surrounding lands regarding traffic, service delivery, parking and loading, odors, noise, glare, vibration, and does not create a nuisance.

E. **Conditional Use Permit.** A conditional use permit issued by the Zoning Administrator shall be required for outdoor dining services which are not located within 150 feet of a residential area. The Zoning Administrator shall approve the application if the proposed outdoor dining services comply with the specific standards applicable to the request set forth in this Sec. 54-215.

F. **Standards for Temporary Outdoor Dining Approval.** Restaurants desiring temporary outdoor dining approval 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.

(3) No amplified music shall be permitted in outdoor dining areas approved under this Sec. 54-215. Nothing herein shall prohibit amplified music in outdoor dining areas approved for use prior to effective date of this ordinance, to the extent amplified music was previously permitted in such areas.

(4) Unless authorized as part of a sidewalk dining permit or sidewalk café, outdoor dining areas shall not encroach within any public right-of-way.

(5) Outdoor dining areas shall not encroach into or interfere with required handicapped parking spaces.

(6) Outdoor dining areas shall not interfere with safe pedestrian and vehicular access or access required to be maintained under the Americans with Disabilities Act.

(7) Outdoor dining areas shall not encroach within or interfere with fire and other emergency access.

(8) 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.

(9) Outdoor dining areas shall comply with all applicable occupancy requirements and other provisions of the fire code.

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

(1) Layout. A layout sketch or site plan and a minimum of two (2) photographs showing all sidewalk dining elements, utilities, sidewalks, and appropriate measurements shall be included with an application for a temporary sidewalk dining permit.

(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 permittor.

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 permittor shall hold harmless the City for any damage that may be done by the City during maintenance and repair of the ROW.

c. The permittor shall maintain the sidewalk easement area in a good and safe condition as long as the temporary sidewalk dining permit remains in effect. Permittor 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 Section 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 shall perform or cause 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 a temporary sidewalk dining permit if the application meets all standards set forth in Sec. 54-215.

(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.

H. **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.

(6) Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct any areas required for accessibility for disabled persons, whether patrons or employees.

(7) 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.

(8) Sidewalk dining and sidewalk dining elements may not violate the vision clearance requirements set forth in Sec. 54-351. 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 impose additional requirements when unusual circumstances exist or when public safety may be jeopardized.
(9) Signs advertising the sale of food, beverages, goods, or services within 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.

I. 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 54-215.F.

(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 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.

II. Administrative Suspension. Any temporary outdoor dining approval and/or sidewalk dining permit is subject to suspension, modification, or amendment at any time based on a determination that additional conditions or limitations shall be required to protect against adverse impacts to the public health, safety, or welfare associated with new or expanded area.
K. **Modification.** City Council may suspend, modify, or amend the provisions governing outdoor dining services at any time, in which case all restaurants shall comply with any such modifications or amendments, whether or not they previously received an approval or permit hereunder. In this respect, an approval for outdoor dining services is considered an activity, not a use. All approvals and permits governed by this Section shall automatically expire on the Expiration Date, unless such approval or permit is otherwise suspended, modified, amended, or extended in accordance with this Section or a subsequent ordinance adopted by City Council.

L. **Appeal.** Any decision of the Zoning Administrator under this Ordinance may be appealed to the BZA-Z, in accordance with the standards governing appeals from administrative officers under state law and the City’s Zoning Ordinance.

M. **Compliance.** Permittees are responsible for ensuring that the procedures and standards set forth in this Section 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. 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 Section. 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.

N. **Previously Approved Outdoor Dining Services.** Outdoor dining services permitted or approved under an emergency ordinance may continue in effect until the Expiration Date, subject to the following terms and conditions: (1) the outdoor dining service was permitted or approved prior to December 1, 2020; (2) the permit or approval for the outdoor dining service remains in effect, under its terms or through an extension thereof, on January 12, 2021; (3) any physical expansion of an outdoor dining service shall follow the procedures set forth in this Section with respect to such expanded area only; and (4) the permit or approval may be suspended, modified, amended, or extended in accordance with this Section or a subsequent ordinance adopted by City Council. The Zoning Administrator is hereby authorized to provide written confirmation of the continued effectiveness of any such permit or approval complying with the above-referenced terms and conditions. No additional conditional use permit or special exception permit shall be required under these circumstances.
Section 2. This Ordinance shall become effective upon enactment and shall expire on January 10, 2022 at 11:59:59 p.m., unless otherwise modified, amended, extended, or rescinded by a subsequent Ordinance adopted by City Council.

Ratified in City Council this 13th day of January in the Year of Our Lord, 2021, and in the 245th Year of the Independence of the United States of America.

By: 

John J. Tecklenburg
Mayor, City of Charleston

ATTEST: 

Jennifer Cooke
Clerk of Council