ORDINANCE NUMBER: 989

AN ORDINANCE TO REGULATE THE USE OR SMOKING OF LIGHTED TOBACCO PRODUCTS IN OR ABOUT "PUBLIC PLACES" LOCATED WITHIN THE CITY OF FAIRFIELD

WHEREAS, the Fairfield City Council finds and determines that it is in the public interest to regulate the use of *lighted tobacco products* in or about public places located within the City of Fairfield; and

WHEREAS, the Fairfield City Council finds and determines that the use of lighted tobacco products in public places likely contributes to air pollution, likely exposes people in the vicinity of tobacco smoke to various serious respiratory and cardiovascular afflictions, and likely deprives those persons who are in public places of the benefits of an environment unmarred by tobacco smoke; and

WHEREAS, the Fairfield City Council intends and desires to regulate and reduce the use of lighted tobacco products in or about public places located within the City.

BE IT THEREFORE ORDAINED by the Fairfield City Council as follows:

SECTION 1. **Purpose.** The Council hereby implements an Ordinance Regulating the use of lighted tobacco products in public places located within the City.

SECTION 2. ***Short Title.*** This Ordinance shall be commonly referred to as the "Tobacco Smoke Regulation Law."

SECTION 3. ***Definitions.*** For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense shall include the future; words in the plural number shall include the singular number; and words in the singular number shall include the plural number.

a. *Acute Care Hospital* shall mean any enclosed area included in a hospital that provides medical care for persons;

b. *City* is the "City of Fairfield, Alabama";

c. *Employee* shall mean any person who is employed by an employer for compensation or profit;

d. *Employer* shall mean any person, partnership, corporation, association or other entity that employs one (1) or more persons or employees;

e. *Place of Employment* shall mean any enclosed indoor (or "close" outdoor) area that is under the control of an Employer and to which Employees have access during the course of Employment. Such "places" shall include—but not be limited to—Work Areas, Employee Lounges, Employee Restrooms, Conference Rooms and Employee Cafeterias/"Eateries";

f. *Private Club* shall mean a *bona fide* non-profit organization or association which requires membership application to be filled out for membership, that maintains detailed membership records, and that charges fees in connection with the membership. Records concerning Private Clubs shall be kept manually or electronically

and shall indicate the names and addresses of members and their identification numbers issued to members.

g. *Public Places* shall mean all enclosed public places located in the City of Fairfield made available for use by Employees of particular Employees, by Members of a particular Membership or by members the "general public".

"Public Places" may also be those places which are outdoors, in which persons assembled would be, unavoidably, in close proximity to each other, if smoking in such a place would cause or permit smoke emissions to come in contact with others in the immediate vicinity of said smoking activity.

(1). "Public Places" shall include—but not be limited to:

i. Aquariums, Galleries, Libraries and Museums;

ii. Areas available to and customarily used by the "general public" in business and non-profit entities patronized by the public—including but not limited to: Banks, Hotels, Motels, and Laundromats;

iii. Bingo Facilities, during Bingo Games or Sessions;

iv. Convention Facilities;

v. Elevators;

vi. Facilities used for exhibiting a Movie/Motion Picture, Stage Production, Dramatic Performance; Musical/Dance Recital, or other similar Performance;

vii. Health Care Facilities;

viii. Licensed Child Care and Adult Care Facilities;

ix. Lobbies, Hallways, and other "Common Areas";

x. Rooms, Chambers, Meeting or Assembly Places—including but not limited to: Any and All Buildings under the control of an Agency, Board, Commission, Committee or the Council of the City of Fairfield;

xi. Service Lines;

xii. Shopping Malls in "close" or enclosed areas; and

xiii. Sports Arenas—whether enclosed/indoors or outdoors;

xiv. Restaurants, Food "Bars" or "Stands", and similar "Eateries", regardless of whether alcoholic beverages are served; and

xv. Bars, Clubs, Lounges, and similar "social" Establishments, regardless of whether alcoholic beverages are served.

(2). "Exemptions". Notwithstanding any other provisions of this Article to the contrary, the following areas shall be exempted from the provisions of subject "Public Places":

i. Private Residences, except when used as a Licensed Child Care Facility; Adult Day Care Facility or Health Care Facility;

ii. Hotel and Motel Rooms that are rented to Guests and are designated as "smoking" rooms by the Management of the Hotel or Motel;

iii. Retail Tobacco Stores—provided that smoke from these Places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance; and

iv. Private Vehicles for Hire by Members of the public.

h. *Service Line* shall mean any indoor line at which one (1) or more persons are waiting in line for receipt of service. "Service Line" shall also mean any outdoor line in which persons therein are in close proximity to each other;

i. *Smoke* or *Smoking* shall mean the carrying, holding, inhaling, or exhaling of the smoke from any form or kind of lighted tobacco pipe, cigar, cigarette or other similar "smoking" instrument.

SECTION 4. ***Offenses.*** A Person violates this Ordinance and commits a Misdemeanor if he or she engages in any of the following conduct:

a. Knowingly or intentionally, with disregard, *smokes* in a *public place*, as defined herein, and such *public place* is not a "designated smoking area" or an area exempted hereunder;

b. Knowingly or intentionally, with disregard, *smokes* in any Bus, Public Passenger Carrier—including a Taxicab or other Car for Hire—that is not engaged in "interstate commerce"; or

c. If the Owner, Lessee or other Person in charge of a "Public Place", knowingly or intentionally, with disregard, fails to make a reasonable effort to inform those on the affected premises that "knowingly" or "intentionally" smoking in a Public Place is proscribed behavior.

SECTION 5. ***Designation of "Smoking Areas".***

a. Owners, Lessees or other Persons in charge of "Public Places" may—but are not required to—designate one (1) or more areas as "Smoking Areas"

b. Notice: If a *Public Place* is designated as a "Smoking Area", each such Area shall:

(1). Be located in an outside area of the premises of the Public Place;

(2). Be designated by **clearly visible, plainly written** Signs placed in or at the Front Entrance to the premises of the "Public Place";

(3). Contain Ashtrays or other appropriate Disposal Containers for lighted Tobacco Products and appropriate Extinguishment Equipment for lighted smoking materials.

SECTION 6. ***Designation of "Nonsmoking Areas".*** *Except as provided by section* 3(h)(2), above, Owners, Lessees or other Persons in charge of Public Places shall place a plainly visible Sign at the Front Entrance to the Public Place, thereby notifying Persons entering the premises or the "area" of the premises that Smoking is thereon prohibited.

SECTION 7. ***Regulating Smoking in Places of Employment.*** An Employer may designate his or her Place of Business, or any portion thereof, as "Non-Smoking". It shall be unlawful for any Person to smoke in a Place of Employment, unless—in compliance with all applicable Laws and Regulations—an Employer, Employer's Representative, or other Person in charge or control of a Place of Employment has declared, in a conspicuous ***posted writing*** that smoking is allowed.

SECTION 8. ***City Owned Property.*** It shall be unlawful for any person to smoke in any City-owned or operated Building, Vehicle, or Enclosed Facility. It shall be further unlawful for any person to smoke in any "close" outdoor area, located on City-owned premises, if smoking in such an area would cause or permit such smoke emissions to come in contact with others in the immediate vicinity of said smoking activity.

SECTION 9. ***Enforcement.*** This Ordinance shall be enforceable by any duly sworn Police Officer, any non-Police Representative of the City of Fairfield with Arrest Powers, by a duly authorized Jefferson County Health Officer, or as otherwise permitted by law.

SECTION 10. ***Violation of Ordinance:***

a. It shall be unlawful to violate any term or provision of this Ordinance. *Violations hereunder shall constitute a Misdemeanor and shall be prosecuted in the Fairfield Municipal Court.*

b. Any Person who willfully and with disregard for the welfare of other Persons using the "common" Public Areas in the City of Fairfield smokes in an area prohibited hereunder shall be in violation of this Ordinance.

c. Any Business Proprietor or Individual in charge of a Public Place, (i). who fails or refuses to designate "Smoking" and "Non-smoking" areas, as required herein, or (ii). who refuses to enforce the designations set forth herein shall be in violation of this Ordinance.

SECTION 11. ***Fines and Penalties:***

a. *Fines* imposed hereunder shall be in an amount not less than Twenty-five Dollars ($ 25.00) nor more than the maximum Fine allowed by the State of Alabama for a Misdemeanor Offense.

b. *Continuing Offenses.* Each day an violation of this Ordinance shall continue shall constitute an indivisible "Offense", punishable as such.

c. *Imprisonment.* Imprisonment shall be imposed as a Sentence, as the result of violating this Ordinance, as the Court deems advisable, in a manner authorized by State and Local Law.

d. *First Offense/Violation.* A Party charged with a First Offense hereunder may elect to appear before the Municipal Court Magistrate, within the time specified in the Summons and Complaint, and may—upon entering a Plea of "Guilty" and executing a "Notice of Waiver of Rights" form—pay a Fine of Twenty-five ($ 25.00) Dollars. *Court Costs shall be waived for such First Offense.*

SECTION 12. ***Summons and Complaint.*** Pursuant to Section 11-45-9.1 of the *Code of Alabama* (1975), as amended, which authorizes Municipalities to issue Summons and Complaints *in lieu of* Arrest Warrants for violation of certain Municipal Ordinances:

a. The Form of the approved Summons and Complaint shall be the *Uniform Non-Traffic Citation and Complaint Form,* as promulgated and prescribed by the State of Alabama Unified Judicial System ARJA-20, 10/2000, as amended;

b. Any duly sworn Police Officer, non-Police Representative of the City of Fairfield with Arrest Powers, a duly authorized Officer of the Jefferson County Health Department, or other authorized Officer may issue a Summons and Complaint to any Person charged with violating this Ordinance; and

c. Any Person charged hereunder may be released from the custody of a duly authorized citing Officer/Agent, upon giving to said citing Officer/Agent his or her written promise (signature on the Citation) to appear in Court, at the designated time and place;

SECTION 13. ***Compliance With Other Laws.*** Nothing in this Ordinance excuses non-compliance with any Local, State or Federal Law, Rule or Regulation,

SECTION 14. ***Effective Period.*** The Curfew Laws hereby enacted shall remain effective until revoked, in the same manner in which they were created.

SECTION 15. ***Severability.*** The Provisions of this Ordinance are hereby deemed to be severable. If any Section, Subsection, Sentence, Clause, Phrase or Portion of this Ordinance is—for any reason—held invalid or unconstitutional, by any Court of competent jurisdiction—such Portion shall be deemed a separate, distinct and independent Provision and such Judicial Holding shall not affect the validity of the remaining, unaffected Provisions hereof.

SECTION 16. ***Cumulative Nature of Remedy.*** The Provisions of this Ordinance are CUMULATIVE, and are in addition to any other Procedure presently authorized by law for the accomplishment of the Objectives herein stated.

SECTION 17. ***Effective Date.*** This Ordinance shall take effect on 01 February 2006, following the adoption and publication by posting same, at three (3) Locations within the Corporate Limits of the City of Fairfield, Alabama.

DONE and ADOPTED on this 3 Day of JANUARY 2006.

Eldridge O. Turner

ELDRIDGE O. TURNER, PRESIDENT
FAIRFIELD CITY COUNCIL

ATTEST:

KENNETH BENION,
CITY CLERK & TREASURER

APPROVED AND TRANSMITTED:

MICHAEL L. JOHNSON, MAYOR

CERTIFICATE OF THE CITY CLERK

I, KENNETH BENION, Clerk and Treasurer of the City of Fairfield, Alabama, hereby certify that the above and foregoing ***Tobacco Smoke Regulation*** is a true and correct copy of the Ordinance adopted and approved at the Regular Meeting of the City Council, held on the 3rd Day of January 2006—as same is represented in the Recorded Minutes.

Moreover, I hereby certify that the above and foregoing Ordinance was published by Posting same at the following Three (3), or more, locations within the City of Fairfield:

(1) The Downtown Fairfield Library; (2) The Fairfield Post Office; and (3) City Hall.

Certified and acknowledged on this 4 day of January 2006.

Kenneth Benion, City Clerk & Treasurer