

**TITLE 6  
ELMORE COUNTY  
ZONING and DEVELOPMENT ORDINANCE**

**CHAPTER 37 – FAMILY BURIAL GROUNDS**

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**Section 6-37-1 Policy:**

The State of Idaho has declared that the maintaining, improving, and beautifying of cemeteries for the human dead is one of the first considerations of a civilized people, and that it is a public benefit, use, and purpose. Because there are citizens of Elmore County who desire to maintain the remains of their loved ones on their own property and not in a public cemetery, it is also a public benefit, use and purpose to provide a method to maintain, improve, and beautify private family burial grounds.

**Section 6-37-2 Composition:**

Family burial grounds shall consist of a lot or portion thereof, containing a burial plot for earth interments, a mausoleum for vault or crypt interments, or a columbarium for interments of cremated remains, or any combination of one or more of the above. No family burial ground is to be used for any purpose other than as a repository for human remains, for religious observances, or for contemplation and reflection. Family burial grounds are not deemed to be equivalent to rural cemeteries as defined in IDAHO CODE: Title 27 Chapter 2.

**Section 6-37-3 Recording and Notice Requirements:**

Family burial grounds shall be laid out and described specifically, by metes and bounds or otherwise, so as to give appropriate notice to lien holders, successors in title, and the public at large, on the deed of record for any lot containing a family burial grounds. The owner of the lot or parcel containing the family burial grounds shall record such deed prior to any interment of human remains thereon. If a lot or parcel containing a family

burial ground is sold, the seller of the property must disclose to the buyer the existence of the family burial grounds.

**Section 6-37-4 Responsibility:**

The owner of any property which contains part or all of a family burial ground has the responsibility for maintaining the property in a manner that is respectful of the memory of the persons whose remains are interred thereon. The responsibility to maintain the family burial grounds runs with the land, and the owner may not be relieved of that responsibility until and unless the family burial ground is disestablished. The responsibility to maintain the family burial grounds extend to successors in title regardless of whether the existence of the family burial grounds was recorded, so long as human remains are interred thereon.

**Section 6-37-5 Setback, Consent and Code Requirements:**

All family burial grounds shall meet the following requirements, prior to the time that any human remains shall be buried or placed therein:

1. No family burial grounds shall be laid out within twenty (20') feet of the boundary line of any lot or parcel, nor within one hundred (100') feet of any dwelling house, hospital or other medical facility, food or beverage processing plant, restaurant, store or other place of business, without the written consent of the owner of the affected property.
2. Regardless of consent, no family burial grounds shall be laid out within fifty (50') feet of any existing well providing water for either human or animal consumption, or within fifty (50') feet of the high-water mark of any spring, stream, lake, reservoir or other known source of water, or within one hundred (100') feet of any schoolhouse or school lot, or within fifty (50') feet of any dwelling house, hospital or other medical facility, food or beverage processing plant, restaurant, store or other place of business, or within fifty (50') feet of the right-of-way of any highway.
3. Construction of a mausoleum, columbarium, or any monument or other grave marker on a family burial ground shall comply with all applicable building code requirements.
4. All uses made of a family burial grounds shall comply with all state requirements, including but not limited to IDAHO CODE sections 39-260 (registrations of deaths), 39-268 (final disposition of dead bodies), and 39-269 (disinterment), and IDAHO CODE Title 54, Chapter 11 (Morticians, funeral directors, and embalmers), and the relevant sections of the IDAHO ADMINISTRATIVE CODE (IDAPA).

### **Section 6-37-6 Standards for Interment and Removal:**

Each interment or removal of human remains in a family burial ground shall meet the following standards:

1. No interment or removal of human remains in a family burial ground may occur except under the direction of a licensed mortician and pursuant to the requirements of IDAHO CODE Title 54, Chapter 11.
2. Non-cremated human remains buried beneath the surface of the ground may not be buried in a manner so that any portion of the outside surface of the container of the remains is less than two (2') feet below the surface of the ground.
3. Each container of human remains buried beneath the surface of the ground shall be indicated by a permanent visible marker or monument. The marker or monument should be placed as soon as practicable after the remains are interred, but placement may be delayed for a reasonable length of time for religious reasons.

### **Section 6-37-7 Disestablishment of Family Burial Grounds:**

A family burial ground, once established, may be disestablished by the owner of the property. To disestablish a family burial ground, the owner must do all of the following:

1. Arrange to remove and properly re-inter any human remains interred in the family burial grounds.
2. Remove any markers or monuments that indicate the presence of human remains.
3. Remove, demolish, or convert to another permitted use any mausoleum or columbarium, constructed on the family burial grounds.
4. File a new deed of record indicating that the family burial ground has been disestablished.

### **Section 6-37-8 Penalties:**

Violation of any provision of this Article is a misdemeanor and is punishable by a fine of up to three hundred (\$300.00) dollars, by incarceration in the Elmore County Jail for a period not to exceed six (6) months, or by both such fine and imprisonment. In the case of a violation of Section C.25-1 of this ordinance, pursuant to IDAHO CODE Section 19-5304, the court may order a prior owner of land who did not record the existence of a family burial grounds on that the land and who did not disclose the existence of the family burial grounds to the buyer of the land prior to selling the land, to pay reasonable costs of disinterment and re-interment of any human remains thereon.