

ORDINANCE NO. 2006-3

AN ORDINANCE AMENDING THE ELMORE COUNTY ZONING ORDINANCE TO CLARIFY THE ENFORCEMENT PROVISIONS OF THE ORDINANCE AND ADD A PROVISION PERMITTING THE COUNTY TO ABATE A NUISANCE

STATEMENT OF PURPOSE:

WHEREAS, Title 67, Chapter 65 of the Idaho Code, and Article 12, Section 2 of the Idaho Constitution provide authority for Elmore County to adopt land use and regulation ordinances, and Elmore County has done so by adopting the Zoning Ordinance of 1994, as well as various subsequent amending ordinances, including specifically Elmore County Ord. 2003-3 (permitting investigation into work conducted without a permit and authorizing a fee for said investigation); and

WHEREAS, the Elmore County Board of County Commissioners, at the request of the Director of the Elmore County Growth and Development Office, has approved a motion to amend the Zoning Ordinance to clarify the enforcement provisions of the ordinance and add a provision permitting the county to abate a nuisance in order to provide for the safety, promote the health and comfort of Elmore County and inhabitants therein, and protect persons and property therein;

WHEREAS, the Elmore County Board of County Commissioners provided notice of hearing on these amendments on June 21, 2006, and June 28, 2006;

WHEREAS, the Elmore County Board of County Commissioners held a public hearing on July 10, 2006.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ELMORE COUNTY, IDAHO, IN LAWFUL MEETING ASSEMBLED, THAT THE ELMORE COUNTY ZONING ORDINANCE, PARTICULARLY ARTICLE XXI-1, ENTITLED "ENFORCEMENT," SHALL BE AMENDED TO CLARIFY THE FOLLOWING SECTION:

Section L.21-1 Penalties Regarding Non-Compliance. In order to maintain property values and to provide a safe and peaceful environment for the people of Elmore County, the following action will be taken for failure to comply with the provisions of the Zoning Ordinance.

The Director of the Elmore County Growth and Development Office, the Building Inspector, or their agent(s) or representative(s), shall provide a Notice of Violation to any landowner, tenant, and/or occupant of the property where there exists a violation of the provisions of the Zoning Ordinance. Such notice shall (1) include a description of the property where the violation exists, and (2) provide a twenty-one (21) day opportunity to cure the violation. This Notice may be made by personal

service or certified mail, return receipt requested. If the landowner, tenant and/or occupant of the property fails or refuses to respond to said Notice of Violation within the prescribed time period, a request for a criminal complaint shall be referred to the Elmore County Prosecuting Attorney's Office.

Upon conviction of any violation of any of the provisions of this Ordinance, such person shall be punished by a fine of not more than a thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment. Prosecutable violators shall be responsible for and pay all incurred investigation, prosecution and court costs as determined by the court having jurisdiction over the proceeding.

Elmore County reserves the right to pursue such violations through civil and/or criminal remedies.

BE IT FURTHER ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ELMORE COUNTY, IDAHO, IN LAWFUL MEETING ASSEMBLED, THAT THE ELMORE COUNTY ZONING ORDINANCE, PARTICULARLY ARTICLE XXI-1, ENTITLED "ENFORCEMENT," SHALL BE AMENDED TO ADD THE FOLLOWING SECTIONS:

Section N.21-1 General Enforcement Provisions. All departments, officials and employees of Elmore County vested with the authority to issue permits shall conform to the provisions of this Ordinance and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this Ordinance. Any such permit issued in conflict with the provisions of this ordinance shall be null and void. The Director of the Growth and Development Office shall maintain a zoning enforcement program to promote the abatement of violations of this ordinance and to provide assistance in the prosecution of such violations. It shall be the duty of the Director of the Growth and Development Office and/or the Building Inspector, or their authorized agent(s), to enforce the provisions of this Ordinance pertaining to the erection, construction, reconstruction, moving, conversion, alteration, addition, location, or razing of any building or structure. It shall further be the duty of the Director of the Growth and Development Office, or his/her authorized agent(s), to enforce the provisions of this Ordinance pertaining to land use regulation, including compliance with the wrecking, salvage and/or junk yard provisions.

Section O.21-1 Abatement of Nuisance by County. The County may, at its election, abate or cleanup any nuisance or violation of the County Ordinances and nothing contained in this subsection of the Zoning Ordinance shall be construed as limiting, prejudicing or adversely affecting the County's ability to concurrently or consecutively use any criminal or civil enforcement proceeding the County may deem applicable. Proceeding under this subsection of the Zoning Ordinance will not preclude the County from proceeding under other subsection of any County Ordinance or any other applicable provision of State or Federal Statutes.

Following the determination by the Growth and Development Director or his/her authorized agent(s) and representative(s) that any nuisance is being maintained or violation of the provisions of the Zoning Ordinance is being carried out, notice shall be given to the owner or owner's representative either in person or by certified mail to the last known address shown under the Elmore County tax rolls for the subject property, to abate the nuisance or violation within a time, not exceeding twenty-one (21) days, to be specified in the notice. If the owner or owner's representative fails to comply with the requirements of the notice within the period specified therein, Code Enforcement Staff may take action including abatement or cleanup.

The expenses associated with abatement and abatement proceedings (including any expenses arising from contractors hired by the County to perform said abatement, investigatory costs and costs of suit) shall be charged to the owner, occupant or person in charge or possession of the premises or property upon which the nuisance exists. The Prosecuting Attorney may seek recovery of these expenses and costs under I.C. §§ 31-604, 52-202 and 52-205. Said costs shall attach as a lien upon the subject property if unpaid.

P.21-1 Definitions. The following terms shall have the following definitions for purposes of the Zoning Ordinance.

"ABATE" means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such manner and to such an extent as the Code Enforcement Staff shall determine is necessary in the interest of the general health, safety and welfare of the community.

"NUISANCE, PUBLIC" is defined as follows:

The owner or person in control shall maintain all property, premises or rights-of-way in a nuisance free manner.

A. Abandoned, dismantled, wrecked, inoperable, unlicensed, and discarded objects, equipment or appliances such as, but not limited to vehicles, boats, water heaters, refrigerators, furniture which is not designed for outdoor use, household fixtures, machinery, equipment, cans or containers standing or stored on property, sidewalks, alleys and streets; which can be viewed from a public street, walkway, alley or other public property and which items are readily accessible from such places, or which are stored on private property in violation of any other law or ordinance;

B. Discarded putrescibles, garbage, rubbish, refuse or recyclable items which have not been recycled within 15 days of being deposited on the property which could be determined to constitute a fire or environmental hazard, or to be detrimental to human life, health or safety;

C. Oil, grease, paint, other petroleum products, hazardous materials, volatile chemicals, pesticides, herbicides, fungicides or waste (solid, liquid or gaseous) which could constitute a fire or environmental hazard, or to be detrimental to human life, health or safety;

D. Lumber (excluding lumber for the construction project on the property with a valid building permit), salvage materials, including but not limited to auto parts, scrap metals, tires, other materials stored on premises in excess of 30 days and visible from a public street, walkway, alley or other public property;

E. Receptacles for trash, discarded materials and recyclables which are left in the front yard or on public rights-of-way following the day of the regularly scheduled refuse pick-up for the property;

F. Swimming pool, pond, spa, other body of water, or excavation, which is abandoned, unattended, unsanitary, empty, which is not securely fenced, or which poses a threat to be detrimental to human life, health or safety;

G. Allowing the accumulation of weeds, grasses or other vegetation with an average height over 12 inches, which are liable to be fired.

All remaining provisions of the Zoning Ordinance and its various amendments shall remain in full force and effect.

This Ordinance shall be in full force and effect from and after its passage, approval, and publication.

DATED this 17th day of July 2006.





MARY EGUSQUIZA, Chairperson



LARRY ROSE, Commissioner



CONNIE CRUSER, Commissioner

ATTEST:



GAIL L. BEST
Clerk of the Board of County Commissioners