

## **CHAPTER 1 - TITLE, PURPOSE, INTERPRETATION AND ENACTMENT**

### **Sections:**

- 6-1-1: Authority and Purpose**
- 6-1-2: Provisions Declared to Be Minimum Requirements**
- 6-1-3: Preservation of Private Property Rights**
- 6-1-4: Prohibited Uses**
- 6-1-5: Wildfire Prevention**
- 6-1-6: Severability Clause**
- 6-1-7: Effective Date**
- 6-1-8: Applicability**
- 6-1-9: Interpretation**
- 6-1-10: Errors in Legal Descriptions**
- 6-1-11: References to Other Laws or Titles or Policies**
- 6-1-12: Saving Clause**

### **Section 6-1-1: Authority and Purpose:**

This Elmore County Zoning and Development Ordinance, Title 6 through 11, are adopted pursuant to authority granted in Title 67 Chapter 65 of the Idaho Statute ("Local Land Use Planning Act") and Article XXII, § 2 of the Idaho Constitution. It is enacted for the purpose of guiding the use and development of land within Elmore County while promoting public health, safety, and general welfare.

### **Section 6-1-2: Provisions Declared to Be Minimum Requirements:**

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements. Whenever the requirements of any other lawfully adopted rules, regulations, titles, or resolutions prevail, the most restrictive rules or those imposing the higher standards shall govern.

### **Section 6-1-3: Preservation of Private Property Rights:**

This Ordinance shall be interpreted to equally protect each citizen from the undue encroachment on such citizen's private property by his or her neighbors' use of his or her own private property. Each citizen shall have the maximum use of his or her property without placing undue burden upon his or her neighbor. Every citizen of Elmore County shall always have the right to appear in person or by his or her agent before the Director, Commission or Board to freely petition for the relief of an alleged burden created by this Ordinance, and to appeal any decision of the Director or Commission pursuant to the procedure stated herein. The enforcement of this Ordinance shall apply equally to each person and property in the similar circumstances.

### **Section 6-1-4: Prohibited Uses:**

All uses not permitted under the terms of this Ordinance are prohibited.

**Section 6-1-5: Wildfire Prevention:**

Elmore County has a long history with wildfires. This Ordinance is oriented to the prevention of wildfires and mitigation of the negative effects of wildfires.

**Section 6-1-6: Severability Clause:**

If any provisions of this Ordinance or the application to any persons or circumstances are held invalid, the remainder of the Ordinance or the application or provisions to other persons or circumstances shall not be affected thereby. Should any chapter, section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the Ordinance as a whole or any part thereof other than the part so declared shall not be affected thereby.

**Section 6-1-7: Effective Date:**

This Ordinance shall become effective from and after the date of its approval and adoption, as provided by law.

**Section 6-1-8: Applicability:**

- A. The regulations of this Ordinance shall apply to all unincorporated properties within Elmore County and shall govern development and use of those properties.
- B. Compliance; Approval Required: No person or entity shall construct, alter, move, or change the use of a structure or undertake any development unless:
  - 1. The proposed use, structure, or division of property complies with this Ordinance; and
  - 2. Any required approval is first obtained as provided by this Ordinance, and any applicable conditions of approval are met.
- C. Permits Required: Nothing in this Ordinance shall eliminate the need for obtaining any other required permits, including, but not limited to, building permits, plumbing, electrical, or mechanical permits, grading permits, or any permit, or approval required by other sections of this Ordinance, other political subdivisions of the State of Idaho, or agencies of the State of Idaho.
- D. Previous Violations: The prosecution of violations that occurred under previous land use regulations and that remain a violation under this Ordinance shall continue until resolved.

- E. **Project with Pending Application:** All applications shall be processed according to the regulations and requirements in effect as of the date the Director accepted the application and deemed it complete. Director acceptance and deeming an application complete does not guarantee approval.
- F. **Tabled Application:** Projects that have been accepted by the Director and tabled prior to any approval, shall be deemed withdrawn after one (1) year of inactivity unless otherwise approved by the County. A notice will be sent to the Applicant within thirty (30) days of expiration.
- G. **Approved Project with Pending Request for a Time Extension:** Time extension requests shall be consistent with the requirements that are in effect when the original application was approved.
- H. **Approved Projects Not Yet Completed:** Any approved application may still be completed as provided by the approval.

**Section 6-1-9: Interpretation:**

A. **Language:**

1. **Terminology:** When used in this Ordinance, all words used in the present tense shall include the future; words used in the singular number shall include the plural number and the plural the singular, unless the natural construction of the sentence indicates otherwise. The word "shall" is mandatory, and the word "may" is permissive.
2. **Number of Days:** Whenever a number of days is specified in this Ordinance, or in any permit, condition of approval, or notice issued or given as provided in this Ordinance the number of days shall be construed as calendar days, except that such time limits shall extend to the following working day when the last of the specified number of days falls on a weekend or Elmore County holiday.
3. **Defined Terms:** Terms defined in this chapter shall have their defined meanings when used elsewhere in this Ordinance. For the purpose of readability and clarity, such terms may not be shown in initial caps.
4. **Section Headings:** Section headings or captions are for reference purposes only and shall not be used in the interpretation of this Ordinance.
5. **References:** All references to State or Federal laws and/or regulations shall refer to such laws and/or regulations as they may be amended over time.

B. **Measurements:**

1. **Structure height:** Shall be measured as the vertical distance from the average contact ground level at the front wall of a building to the highest point of the coping of a flat roof, the deck line of a mansard roof, or the average height (mid-point) of the highest gable of a pitch or hip roof.
  2. **Linear distance:** Shall be measured in a horizontal line; it shall not be measured along an inclined surface or line. For uses that have a separation standard, the distance shall be measured from the nearest customer entrance of the proposed use to the nearest property line of the specified use. The measurement is to be conducted in a radial fashion by the specified number of feet (e.g., 300 feet, 1,000 feet).
  3. **Illumination levels:** Shall be measured with a calibrated photoelectric photometer or similar device capable of accurate measurement of foot-candle or lumens when measured one foot (1') from the light source.
  4. **Noise levels:** Shall be measured at the property line with a calibrated noise meter or similar device capable of accurate measurement (dB, decibel) of sound.
- C. **District Boundaries:** Legal descriptions shall be adopted with all official zoning maps. Where uncertainty exists about the location of any district boundary shown on the official zoning map, the following rules shall be used to resolve the uncertainty:
1. Where a district boundary approximately follows a property line, such property line shall be construed as the district boundary; and
  2. Where a district boundary approximately follows a street, alley, or railroad line, such street, alley, centerline, or the extension of such line, shall be construed as the district boundary. Where a street or alley is officially vacated and that street or alley has not been given a zoning designation, the land that was formerly in the vacated street or alley shall have the same designation as the abutting property on either side of the centerline of the vacated street or alley; and
  3. Where a district boundary approximately follows a watercourse, the centerline of the watercourse shall be construed to be such boundary. In the event of a change in the watercourse shoreline, the boundary shall be construed as moving with the actual shoreline.
- D. **Conflicting Regulations:**
1. In case of conflict between the text and the maps of this Ordinance, the text shall prevail; and
  2. If conflicts occur between different regulations of this Ordinance, or between this Ordinance and other regulations of this Ordinance, the most restrictive regulation shall apply unless otherwise specified by other regulations of this Ordinance.

E. Allowed Uses: If a proposed use of property is not specifically listed in Title 7, Chapter 2, Zoning and Overlay Districts, of this Ordinance, the use shall be prohibited, except as follows: The Director may determine that a proposed use not listed in this Ordinance is equivalent to an allowed or conditional use if the Director finds all of the following:

1. The impacts on public services and activities associated with the proposed use are substantially similar to those of one or more of the uses listed in the applicable base or overlay districts as allowed; and
2. The proposed use shall not involve a higher level of activity or density than one or more of the uses listed in the applicable base or overlay districts as allowed; and;
3. The proposed use is consistent with the purpose of the district in which the use is proposed to be located; and
4. The proposed use is in substantial conformance with goals and objectives of the applicable Comprehensive Plan.

**Section 6-1-10: Errors in Legal Descriptions:**

Where a property has not been zoned due to an error in a legal description the following shall apply:

1. An error caused by the County, shall be corrected and duly processed by the County as soon as the error is discovered; and
2. If the error is caused by the applicant and/or owner, the applicant shall apply for a zoning Ordinance map amendment and submit the proper fees.

**Section 6-1-11: References to Other Laws or Titles or Policies:**

References in this Ordinance to other Titles or Ordinances of Elmore County and Statutes of the State of Idaho are provided solely for the coordination of this Ordinance with such other Ordinances and Statutes.

**Section 6-1-12: Saving Clause:**

Should any section, clause, or regulation of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be invalid; each section, clause, or regulation hereof being declared severable.