

## ORDINANCE NO. 2003-5

**AN ORDINANCE AMENDING THE ELMORE COUNTY ZONING AND DEVELOPMENT ORDINANCE TO ADD AN ADDITIONAL SECTION PERTAINING TO ESTABLISHMENT AND MAINTENANCE OF PRIVATE BURIAL GROUNDS AND DISINTERMENT AND RE-INTERMENT OF HUMAN REMAINS WITHIN ELMORE COUNTY.**

**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 and Development Ordinance of 1994, and subsequent amending ordinances, and

**WHEREAS**, The Elmore County Planning and Zoning Commission has recommended after notice and hearing that several amendments, additions, and clarifications be made to the Zoning and Development Ordinance of 1994, and

**WHEREAS**, The Board of Commissioners of Elmore County provided notice of hearing on these amendments on October 8, 2003 and October 15, 2003, and

**WHEREAS**, The Board of Commissioners of Elmore County held a public hearing on October 22, 2003,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ELMORE COUNTY, IN LAWFUL MEETING ASSEMBLED:**

**Section 1. Article II-1, Section B.2-1, entitled “Meaning of Terms or Words,” is amended to add the following definitions:**

**Burial Grounds, Family:** A lot or portion thereof, set aside for the interment or burial of human remains of deceased family members of the owner or owners of the lot, and not intended for subdivision or sale separate from the remainder of the lot.

**Columbarium:** A structure, room, or other space in a building or structure containing niches for the permanent inurnment of cremated remains.

**Mausoleum:** A structure, room, or other space in a building or structure containing vaults or crypts for the permanent interment of human remains.

**Section 2. Article VI-1, Section B.6-1, entitled “Official Schedule of Zoning District Regulations.” is amended to add the following classification:**

“Burial Ground, Family”, with the following zoning/use classifications:

AgA: (r)P; AgB: (r)P; R: (r)P; C, M1, M2, AHZ, ACZ: not permitted

Section 3. Article VIII-1, Section E.8-1, entitled "General Development Standards by Zoning District," is amended to add the following provisions:

a. Under Subsection 1.E.8-1, entitled "PRIME AGRICULTURE-GRAZING A - Zone Ag A" a new clause (m), as follows:

m. Family Burial Grounds

Family burial grounds are permitted, subject to the restrictions set forth in Subsection 4.A.10-1 and Article XXV of this Ordinance, on agricultural and residential tracts.

b. Under Subsection 2.E.8-1, entitled "GENERAL AGRICULTURE/GRAZING/FOREST B - Zone Ag B," a new clause (n.) as follows:

n. Family burial grounds

- Refer to Ag A Zone for standards

c. Under Subsection 3.E.8-1, entitled "RESIDENTIAL - Zone R and Residential Lots and Residential Parcels," a new clause (j.) as follows:

j. Family burial grounds

- \* Refer to Ag A Zone for standards.

Section 4. Article X-1, Section A.10-1, entitled "Accessory Use Review Process," is amended to add the following provision:

a. A new Subsection 4.A.10-1, is added as follows:

4.A.10-1 Construction of a mausoleum, columbarium, or monument on a family burial grounds shall be considered as an accessory use, and shall be subject to the accessory building restrictions set forth below:

Section 5: A new Article XXV-1, entitled "Family Burial Grounds," is added as follows:

#### **ARTICLE XXV-1 FAMILY BURIAL GROUNDS**

Section A.25-1 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 B.25-1 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 C.25-1 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 grounds is sold, the seller of the property must disclose to the buyer the existence of the family burial grounds.

Section D.25-1 Responsibility. The owner of any property which contains part or all of a family burial grounds 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 E.25-1 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.E.25-1 No family burial grounds shall be laid out within 20 feet of the boundary line of any lot or parcel, nor within 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.E.25-1 Regardless of consent, no family burial grounds shall be laid out within 50 feet of any existing well providing water for either human or animal consumption, or within 50 feet of the high-water mark of any spring, stream, lake, reservoir or other known source of water, or within 100 feet of any schoolhouse or school lot, or within 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 50 feet of the right-of-way of any highway.
- 3.E.25-1 Construction of a mausoleum, columbarium, or any monument or other grave marker on a family burial grounds shall comply with all applicable building code requirements.
- 4.E.25-1 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 F.25-1 Standards for interment and removal. Each interment or removal of human remains in a family burial grounds shall meet the following standards:

- 1.F.25-1 No interment or removal of human remains in a family burial grounds may occur except under the direction of a licensed mortician and pursuant to the requirements of IDAHO CODE Title 54, Chapter 11.
- 2.F.25-1 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.F.25-1 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 G.25-1 Disestablishment of family burial grounds. A family burial grounds, once established, may be disestablished by the owner of the property. To disestablish a family burial grounds, the owner must do all of the following:

- 1.G.25-1 Arrange to remove and properly re-inter any human remains interred in the family burial grounds.
- 2.G.25-1 Remove any markers or monuments that indicate the presence of human remains.
- 3.G.25-1 Remove, demolish, or convert to another permitted use any mausoleum or columbarium, constructed on the family burial grounds.
- 4.G.25-1 File a new deed of record indicating that the family burial grounds has been disestablished.

Section H.25-1 Penalties Violation of any provision of this Article is a misdemeanor and is punishable by a fine of up to \$300.00, 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 reinterment of any human remains thereon.

**THIS ORDINANCE** Shall be in full force and effect from and after its passage, approval and publication.

**DATED** this 27<sup>th</sup> day of October, 2003.



*Calvin Ireland*  
CALVIN IRELAND, Chairman

*Larry E. Rose*  
LARRY E. ROSE, Commissioner

*Mary Egusquiza-Stanek*  
MARY EGUSQUIZA-STANEK, Commissioner

**ATTEST:**

*Gail L. Best*  
GAIL L. BEST, Clerk