

ORDINANCE NO. 2015-01

**ORDINANCE
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE
COUNTY OF DELTA, STATE OF COLORADO**

ORDINANCE NO. 2015-01

AN ORDINANCE SETTING FORTH STANDARDS FOR THE PRIVATE BURIAL/HUMAN INTERNMENT OF A DEAD HUMAN BODY ON PRIVATE PROPERTY WITHIN THE UNINCORPORATED BOUNDARIES OF DELTA COUNTY, STATE OF COLORADO.

WHEREAS, the Board of County Commissioners of Delta County, Colorado, (BoCC) is a legal and political subdivision of the State of Colorado for which the BOCC may act; and

WHEREAS, under § 30-15-401 C.R.S., the Board of County Commissioners of Delta County, Colorado (the "Board"), has the general enabling power to adopt ordinances for the control or licensing of purely local concern, and to do all acts and make all regulations which may be necessary or expedient for the promotion of the health, safety and welfare of the present and future residents of Delta County; and

WHEREAS, under § 29-20-102 and § 29-20-104 C.R.S., the Board may adopt ordinances applicable to the unincorporated areas of the County to plan for and regulate the use of land within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns; and

WHEREAS, under § 25-2-111 C.R.S., the burial of a dead human body on private property, subject to certain requirements, is permitted, and

WHEREAS, it is the opinion of the Board that in order to preserve the public health, safety and welfare of the citizens of Delta County, the Board should take the following action.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Delta County:

This Ordinance shall be known as the Delta County Private Land Burial Ordinance.

Section 1: Purpose:

- 1.1 This ordinance protects the public health, safety and welfare of the citizens and residents of Delta County, Colorado, by setting standards for the private burial/internment of a deceased person in the unincorporated area of Delta County.
- 1.2 This ordinance does not apply to dead human bodies interred in cemeteries, vaults or tombs operated or maintained by public entities or businesses that bury people in an ordinary course of business and are available to the general public.

Section 2: Authority/Effect:

This Ordinance is authorized under Part 4 of Article 15 of Title 30, and Part I of Article 20 of Title 29, and Part I of Article 2 of Title 25, C.R.S.

Section 3: Applicability:

- 3.1 This Ordinance shall apply throughout the unincorporated area of Delta County, including public and state lands.
- 3.2 If any section, subsection, sentence, clause or phrase of this Ordinance is, held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of County Commissioners declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of sections, subsections, sentencing, clauses and phrases are declared unconstitutional or invalid.

Section 4. Standards for Private Burial: The following standards shall be complied with for the private burial/human internment of a dead human body on private property in the unincorporated area of Delta County;

- 4.1 The Delta County Sheriff, Municipal Law Enforcement or the Delta County Coroner shall be notified at the time of the person's death when a private burial is planned or considered.
- 4.2 Under § 25-2-110 C.R.S, a Death Certificate shall be recorded with the Delta County Clerk and Recorder's office within five days following the death
- 4.3 Under Section § 25-2-111 (7) (a) C.R.S., the owner(s) of land used to inter a dead human body shall record the burial within thirty days after the burial. In accordance therewith, the owner(s) of land used to inter a dead human body shall complete a Private Burial Affidavit (*Attached hereto and incorporated herein as Attachment 1*). This Affidavit must be recorded with the Delta County Clerk and Recorder and shall include: (I) The deceased person's name as it appears on the death certificate; (II) The deceased person's date of birth; (III) The deceased person's age at death; (IV) The cause of death; (V) The name of the owner or owners of the property where the dead human body is interred; (VI) The legal description of the property where the dead human body is interred; (VII) The reception number for the death certificate if recorded by the county clerk; and (VIII) The latitude and longitude coordinates, such as those given by a global positioning system, that are verified by two witnesses **OR** the county coroner, sheriff, or a designee of the county coroner or sheriff. Subsection (7) does not apply to dead human bodies interred in cemeteries, vaults, or tombs operated or maintained by public entities or businesses that inter people in the ordinary course of business and are available to the general public.
- 4.4 The body shall be buried within 24 hours from the time of death if it is not embalmed or refrigerated.
- 4.5 The burial site shall not be in a drainage swale, water course or floodway.
- 4.6 The burial site shall not be in the 100 year floodplain as designated on the current Delta County FEMA Flood Insurance Rate Map.
- 4.7 The burial site shall not be in a recorded right-of-way.
- 4.8 The burial site shall comply with the following horizontal setbacks;
 - a) 10 feet from property lines and structures.
 - b) 100 feet from wells, springs, drainage ways, ditches, and bodies of water.
 - c) 25 feet from all potable water lines.

ORDINANCE NO. 2015-01

- d) 10 feet from all components of an on-site wastewater treatment system.
 - e) 5 feet above the highest seasonal groundwater level.
- 4.9 The grave shall be covered with a minimum of 4 feet of compacted soil.
- 4.10 The longitude and latitude of the grave shall be recorded by a global positioning system. The location shall be verified by the Delta County Sheriff, Delta County Coroner or two witnesses.

Section 5. Definitions:

- 5.1 **Board** - The Board of County Commissioners of Delta County, Colorado.
- 5.2 **Cemetery**- A commercial, historical, public, or church property where three or more human bodies are buried.
- 5.3 **County** - The unincorporated areas of Delta County, including public and state lands, and the corporate limits of any incorporated town or city within Delta County which elects by ordinance or resolution to have this Ordinance apply and upon which an intergovernmental agreement between Delta County and such incorporated town or city has been entered into relating thereto.
- 5.4 **Dead body** - A lifeless human body or parts of such body or bones thereof from the state of which it reasonably may be concluded that death recently occurred.
- 5.5 **Final disposition** - The burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.
- 5.6 **Local government** - Means a county, home rule or statutory city, town, territorial charter city, or city and county.
- 5.7 **Private Burial**- A dead human body placed in a grave on a private property parcel.

Section 6. Unlawful Acts:

- 6.1 **Violation.** Violation of ANY of the standards set forth for Private Land Burial outlined in Section 4 of this Ordinance shall violate this Ordinance and shall be subject to the remedies and penalties provided herein:
- 6.2 **Surcharges.** Besides the fines and penalties prescribed in Section 8.3 of this ordinance, any person convicted of a violation of this ordinance shall be subject to the statutory surcharges of ten dollars (\$10.00) for the Victims and Witnesses Assistance and Law Enforcement Fund under C.R.S. § 30-15-402(2)(a). Each clerk shall transmit the moneys to the court administrator of the judicial district in which the offense occurred for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district under section 24-4.2-103, C.R.S.

Section 7. Enforcement:

- 7.1 This ordinance shall be enforced by the Delta County Sheriff and/or the Delta County Department of Health.
- 7.2 The Board designates the Delta County Attorney, or his/her designee, as the County's legal representative in the enforcement of this Ordinance in a court of applicable jurisdiction.
- 7.3 The County may seek such criminal or civil penalties as provided by Colorado law and provided for in this Ordinance.

Section 8. Criminal Enforcement and Prosecution:

- 8.1 Criminal enforcement of this Ordinance shall be by the Delta County Sheriff.
- 8.2 If so directed by the Board, or his/her designee, a criminal prosecution may be brought against any person who violates any provision of this Ordinance under §§30-15-402 and 30-15-410, C.R.S.
- 8.3 **§ 30-15-402. Violations - penalty - surcharges**—A violation of *ANY* provisions of this Ordinance shall be a class 2 petty offense. The fine for a first offense and for any subsequent offense shall not be over six hundred dollars (\$600.00) per violation and each day shall be deemed a separate violation. The penalty assessment procedure provided in § 16-2-201, C.R.S. may be followed by any arresting law enforcement officer for any such violation. In addition to the penalties prescribed herein, persons convicted of a violation of this ordinance are subject to the surcharges as outlined in 6.2 above.
- 8.4 All fines and forfeitures for violating this Ordinance shall be paid to the Treasurer of Delta County within thirty (30) days of receipt and shall be deposited into the General Fund of Delta County.

Section 9. Civil Remedies and Enforcement Powers:

- 9.1 The County shall have the following civil remedies and enforcement powers for violation of any provisions' of this Ordinance.
- 9.2 The County may seek an injunction, mandamus, or other equitable relief in court to stop any violation of this Ordinance, specifically any acts in conflict with those provisions outlined in *section 4* above and the County may recover costs of any such action;
- 9.3 The fine for a first offense and for any subsequent offense shall not be over six hundred dollars (\$600.00) per violation and each day shall be deemed a separate violation. Besides the penalties prescribed herein, persons found to violate this ordinance are subject to the surcharges as outlined in 6.2 above.

Section 10. Additional Remedies:

The remedies provided in this Ordinance shall be cumulative and in addition to any other remedies which may be available to the County and its Board. Nothing contained herein shall be construed to preclude the Board from seeking such other remedies in addition to, or in lieu of, the legal remedies herein granted.

Section 11. Safety Clause:

The Board finds, determines and declares this Ordinance is necessary for the health, safety and welfare of the citizens of Delta County, Colorado.

Section 12. Publication And Effective Date:

The foregoing text is the authentic text of Delta County Ordinance No. 2015-01. The first reading of the Ordinance took place on June 22, 2015, at a regular Board of County Commissioners

ORDINANCE NO. 2015-01

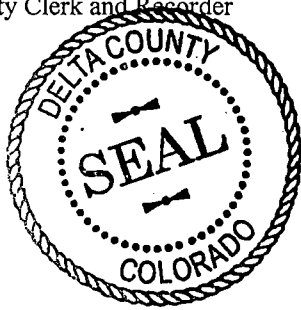
Meeting. It was published in full in the *Delta County Independent* on July 8, 2015. The second reading of the Ordinance took place at a regular Board of County Commissioners Meeting on July 20, 2015. The Ordinance was adopted at a regular Board of County Commissioners Meeting on August 17, 2015, and shall take effect the same date, August 17, 2015.

ADOPTED this 17 day of August, 2015, at Delta, Colorado

ATTEST:

Teri A. Stephenson
Teri A. Stephenson
Delta County Clerk and Recorder

[SEAL]



BOARD OF COUNTY COMMISSIONERS
OF DELTA COUNTY, COLORADO

By: J. Mark Roeber
J. Mark Roeber, Chair

C. Douglas Atchley
C. Douglas Atchley, Vice Chair

C. Bruce Hovde
C. Bruce Hovde, Commissioner

DELTA COUNTY
Private Land Burial Affidavit
(Delta County Ordinance 2015-01)
(Attachment 1)

Pursuant to § 25-2-111 (7) (a) C.R.S, the information in this affidavit must be recorded by a landowner(s) performing/allowing a private human burial on their land within thirty (30) days of the burial. In accordance therewith, this Affidavit must be completed and recorded with the Office of the Delta County Clerk and Recorder.

(I) Deceased party's name as it appears on the Death Certificate: _____

(II) Deceased party's date of birth: ____ / ____ / ____.

(III) Deceased party's age at time of death: _____.

(IV) Cause of death: _____

(V) Property Owner(s) Name(s) where the deceased is interred: _____

(VI) Legal description of the property where the deceased is interred:

(VII) Book and Page/Reception Number of Death Certificate if filed with the County Clerk and Recorder:

(VIII) Latitude and Longitude Coordinates of the burial site from a Global Positioning System (GPS) or Equivalent: _____

*The below Sheriff (or designee), the Coroner (or designee) **OR** two witnesses AND the property owner(s) acknowledge/verify the GPS coordinates:*

Sheriff or Designee *Date*

Coroner or Designee *Date*

Property Owner – Print Name

Property Owner – Print Name

Property Owner Signature *Date*

Property Owner Signature *Date*

Property Owner – Print Name

Property Owner – Print Name

Property Owner Signature *Date*

Property Owner Signature *Date*