

**CITY OF BLACK DIAMOND
WASHINGTON**

ORDINANCE NO. 13-999

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,
WASHINGTON, RELATING TO ESTABLISHMENT AND
ADMINISTRATION OF PUBLIC CEMETERIES;
REPEALING AND RE-ENACTING CHAPTER 12.12 BDMC
TO RE-ESTABLISH A CEMETERY BOARD AND TO
CONFORM THIS CHAPTER TO APPLICABLE STATE
LAW; PROVIDING FOR VESTED RIGHTS AND RIGHT
OF DESCENT AND SURVIVORSHIP; PROVIDING FOR
TRANSFER OF OWNERSHIP; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE
DATE**

WHEREAS, RCW 35A.68.010 provides that the City may exercise the powers to acquire, own, improve, manage, operate and regulate real and personal property for the operation of a city cemetery or other place for the burial of the dead, to create cemetery boards or commissions, to establish and manage funds for cemetery improvement and care and to make all necessary or desirable rules and regulations concerning the control and management of burial places and the investment of funds relating thereto and accounting therefor, all as authorized by Chapter 68.52 RCW; and

WHEREAS, the City Council in 1978 enacted Ordinance No. 210, codified at BDMC Chapter 12.12, establishing the Black Diamond Cemetery as a non-endowment cemetery pursuant to the provisions of Chapter 68.40 RCW, and providing for the creation of a cemetery board, and establishing the duties and obligations of the cemetery board, and providing for the administration of the Black Diamond Cemetery; and

WHEREAS, former RCW Chapter 68.40 RCW is no longer applicable to the administration of the Black Diamond Cemetery and it necessary to re-establish the Black Diamond Cemetery pursuant to Chapter 68.52 RCW, and

WHEREAS, the City desires to amend the City Cemetery Code to conform to the current requirements of Chapter 68.52 RCW and other applicable state laws; and

WHEREAS, the City Council desires to dissolve the non-functioning cemetery board and create a cemetery advisory board solely as an advisory body to the Mayor and City Council; and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety and welfare to amend the Cemetery Code as set forth herein;

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Repeal and Re-Enactment of Article I of Chapter 12.12 BDMC (Regulations).
Article 1, Chapter 12.12 of the Black Diamond Municipal Code is hereby repealed in its entirety and re-enacted to read as follows:

12.12.010 - Cemetery established.

There is established the Black Diamond cemetery, the site thereof to be the present site of the cemetery, at one time operated and maintained by the Black Diamond cemetery association, with full power of acquisition of additional land for burial purposes when the same is deemed necessary. It is the purpose of the cemetery to honor those interred.

12.12.020 - Intent.

It is the intent of the ordinances codified in this chapter to comply with the provisions of Chapter 68.52 RCW regarding the creation, administration, and maintenance of a municipal cemetery and the provisions of Chapter 68.32 regarding the right and title to cemetery lots and rights of interment.

12.12.030 - Maintenance and improvement.

It is the purpose and policy of the city council to maintain the cemetery as a public burial ground with care thereof, and the grave lots therein, and to keep the same as a burial tract with grass, shrubs and trees as shall be provided by the city council in the budget.

12.12.040 -- Advisory Board—Membership.

There is created a cemetery advisory board consisting of five members, all of whom shall be appointed by the mayor, and who shall hold office at his/her pleasure, with the provision that two members shall serve for an initial term of one year, one member for an initial term of two years, one member for an initial term of three years and one member for an initial term of four years, and that thereafter each term shall be for four years, and that the members may be appointed by the mayor from the members of the city council, the qualified voters of the city or residents of adjacent territory who have a historical linkage to the cemetery.

12.12.050 - Board—Duties.

A. It shall be the duty of the cemetery advisory board:

1. To organize and plan for open public meetings as necessary, to develop a public notification process for such meetings in consultation with the city clerk, and to provide a

report on such meetings at the next regular meeting of the city council parks and cemetery committee or its successor.

2. To study, consider and recommend changes to the mayor and city council on cemetery policies, beautification, maintenance and or upkeep.

3. To advocate for and encourage continuing volunteer efforts to maintain and repair cemetery grounds and works, including but not limited to landscaping, headstone maintenance and historical documentation, all within any general guidelines set forth by the city.

B. Nothing in this Section gives the cemetery advisory board the power to direct staff, expend funds of the city or to obligate a particular course of action on behalf of the city. The cemetery advisory board shall have no authority or responsibility for the care or operation of Black Diamond Cemetery, the management or investment of sums received from the sale of lots, or for keeping books of account of such sums received.

12.12.060 – Ownership, descent, and transfer.

A. Right to Use of Cemetery Lot and Right of Interment. The right and title to cemetery lots and rights of interment shall be governed by Chapter 68.32 RCW, as now or may hereafter be amended, including but not limited to; the presumption of ownership as separate property; the vested right of placement of spouses and registered domestic partners; descent of title to spouses, registered domestic partners, and heirs; the right of survivorship of joint tenants; and, waiver of the right of placement.

B. Use of the Unoccupied Portions of Lot. If the owner of the lot(s) or right of interment is deceased, the City is authorized to permit the use of the unoccupied portions of the lot or right of interment by the person entitled to the use of it, only upon submission of an affidavit in conformance with RCW 68.32.050, as now or may hereafter be amended.

C. Transfer of Lot or Right of Interment. Any person(s) owning a lot(s) or right(s) of interment in the cemetery will not be permitted to transfer the lot(s) or right(s) of interment except upon the prior written consent of the City, by and through the Mayor or his/her designee. The City shall not withhold its consent to transfer an individual lot or right of interment unless the City agrees to purchase the owner's right, title and interest to the lot or right of interment for an amount equal to the current rate set forth in the City Code for a comparable lot or right of interment, less a ten (10) percent administrative fee. In the event that the City grants its consent to the transfer, such transfer shall not be effective unless and until the owner pays the transfer fee and submits a completed and notarized notice and approval of transfer upon forms approved by the City. Approved transfer forms are available from the city clerk's office during regular business hours. The amount of the transfer fee shall be set by resolution or ordinance of the City Council. The provisions of this subsection shall not alter the vested rights granted pursuant to Chapter 68.32 RCW.

D. Deposit of Funds. Funds received from the sale of lots will be paid to the city clerk-treasurer, who shall keep a record thereof, and who will deposit such funds to the cemetery improvement fund.

12.12.070 - Abandoned lots.

A. As provided in the laws of the state, the ownership of or right in or to unoccupied space in the cemetery shall, upon abandonment, be subject to forfeiture and sale by the city.

B. The continued failure by an owner to maintain or care for an unoccupied cemetery lot, unoccupied part of a lot, unoccupied lots or parts of lots for a period of five years creates and establishes a presumption that the same has been abandoned. The city council has the necessary power and authority to take the necessary action for forfeiture and sale of any such lots according to and as provided by law.

12.12.080 - Violation—Penalty—Incorporation by Reference.

The City hereby incorporates by this reference as though fully set forth herein, RCW 68.56.010 (Unlawful damage to graves, markers, shrubs, etc. — interfering with funeral), as now or may be hereafter amended.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 7 DAY OF March, 2013.

CITY OF BLACK DIAMOND



Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda L. Martinez
Brenda L. Martinez, City Clerk

Approved as to form:

Chris D. Bacha,
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk: 2/8/2013
Passed by the City Council: 2/7/2013
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