

ORDINANCE NO. 19-4715

AN ORDINANCE AMENDING CHAPTER VIII, OF THE CODE OF THE CITY OF CHERRYVALE, KANSAS; TO ADD ARTICLE 9 - MISCELLANEOUS.

WHEREAS, the Governing Body of the City of Cherryvale, Kansas desires to add Article 9 – Miscellaneous; Sections 8-901, 8-902, 8-903, 8-904, and 8-905 to Chapter VIII – Health and Welfare, of the City Code of the City of Cherryvale, Kansas; and,

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHERRYVALE, KANSAS:

SECTION ONE: That Chapter VIII – Health and Welfare, Article 9 – Miscellaneous, of the Code of the City of Cherryvale, Kansas, is hereby added as follows:

8-901. EXCAVATING IN OR UNDER BRICK SIDEWALKS AND BRICK DRIVEWAYS ON PRIVATE PROPERTY.

Within the City limits of Cherryvale, Kansas, no person shall cut, bore, disturb, dig in or excavate any hole, ditch, trench or tunnel in, through or under, or otherwise disturb the surface of, any portion of any brick driveway or brick sidewalk located on private property without first having secured a permit for such excavation, and all such digging or excavation shall be in accordance with all terms, conditions, and requirements of any permit so issued; provided no such permit shall be required from persons or their contractor(s) performing environmental remediation work under the supervision of the Kansas Department of Health and Environment (“KDHE”). Applications for such permit shall be made to the City Clerk.

8-902. EXCAVATING IN OR UNDER ABANDONED RAILROAD RIGHT-OF-WAY.

Within the City limits of Cherryvale, Kansas, no person shall cut, bore, disturb, dig in or excavate any hole, ditch, trench or tunnel in, through or under, or otherwise disturb the surface of, any portion of abandoned railroad right-of-way, without first having secured a permit for such excavation, and all such digging or excavation shall be in accordance with all terms, conditions, and requirements of any permit so issued. Applications for such permit shall be made to the City Clerk. All excavations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, right-of-ways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

8-903. EXCAVATING BELOW ORANGE MARKER FABRIC.

Within the City limits of Cherryvale, Kansas, no person shall remove, dig in or under, cut, bore or excavate any hole, ditch, trench or tunnel in, through or under, or otherwise disturb any orange marker fabric left in place below the surface of the ground as a barrier or indicator after completion of excavation work conducted as part of the remedial or

removal activities performed on any public or private property within the City limits under the supervision of the Kansas Department of Health and Environment (“KDHE”), without first having secured a permit for such excavation, and all such digging or excavation shall be in accordance with all terms, conditions, and requirements of any permit so issued; provided no such permit shall be required from persons or their contractor(s) performing environmental remediation work under the supervision of the Kansas Department of Health and Environment (“KDHE”). Applications for such permit shall be made to the City Clerk. Any person who accidentally disturbs, removes or displaces any such orange marker fabric, shall obtain replacement orange marker fabric from the City (free of charge) and place it where the original orange marker fabric was located.

8-904. EXCAVATION ON PRIVATE PROPERTY.

- (a) Within the City limits of Cherryvale, Kansas, no person, other than persons or their contractor(s) performing environmental remediation work under the supervision of the Kansas Department of Health and Environment (“KDHE”), shall conduct any excavation on any private property on which access was not granted in the City-wide smelter residue material (“SRM”) survey conducted under the supervision of KDHE in 2016, whether to install or maintain underground utilities such as natural gas, electric, telephone, water, sewer, cable, fiber optic or other such lines, to install lawn sprinkler systems, to demolish or construct building foundations, or otherwise and whether acting on his own behalf as owner or lessee, or acting as a utility provider or contractor on behalf of a utility provider, without having first secured a permit for such excavation, and all such excavation shall be in accordance with all the terms, conditions and requirements of any permit so issued; provided that a permit shall not be required for excavation on private property that has been remediated under the supervision of KDHE or the U.S. Environmental Protection Agency (“EPA”). Applications for such permit shall be made to the City Clerk.
- (b) Within the City limits of Cherryvale, Kansas, any person, other than persons or their contractor(s) performing environmental remediation work under the supervision of the Kansas Department of Health and Environment (“KDHE”), who in the course of excavation on any private property, on which access was granted in the City-wide SRM survey conducted in 2016 under the supervision of KDHE or that has been remediated under the supervision of KDHE or the U.S. Environmental Protection Agency, whether to install or maintain underground utilities such as natural gas, electric, telephone, water, sewer, cable, fiber optic or other such lines, to install lawn sprinkler systems, to demolish or construct building foundations, or otherwise and whether acting on his own behalf as owner or lessee, or acting as a utility provider or contractor on behalf of a utility provider, unexpectedly encounters SRM in the course of such excavation, shall segregate and set aside the SRM or soils containing the SRM, and upon completion of the excavation, take the following actions: (a) place the SRM in the bottom of the excavation hole at least twelve inches below the surface of the ground (eighteen inches if in a distinct children’s play area and twenty-four inches if in a vegetable garden) unless the SRM is a granular black sand underlying

bricks in which case such placement is prohibited, (b) place orange marker fabric (which will be supplied by the City free of charge) on top of the SRM, (c) backfill the excavation hole with soil not containing any SRM, and (d) notify the City Clerk in writing within thirty (30) days of the placement of the orange marker fabric, the approximate location, and the date thereof. Alternatively, the SRM may be hauled in enclosed trucks to a disposal location designated by the City and disposed of there. Such hauling and disposal is required for granular black sand SRM underlying bricks. Disturbance of bricks and underlying granular black sand SRM should be avoided if possible. If disturbance is necessary, the disturbed area shall be repaired by covering with brick (for small areas less than 20 square feet), or for larger areas by concrete (walkways or driveways), or compacted gravel or pavement (driveways). The person arranging for the hauling shall be responsible for the loading and trucking cost, but there shall be no charge to use the City's designated disposal location. The person arranging for the hauling shall notify the City Clerk in writing within thirty (30) days of the disposal, the date and approximate volume thereof. Any person handling SRM shall follow protective precautions as detailed in the Soil-Waste Management Plan approved by KDHE. The City shall maintain specimens of the common types of the material known to be SRM that can be viewed for comparison purposes to determine if suspected material is SRM.

8-905. COLLECTION AND DISPOSAL OF SMELTER RESIDUE MATERIAL FOUND ON THE SURFACE OF PRIVATE PROPERTY.

Within the City limits of Cherryvale, Kansas, any person, other than persons or their contractor(s) performing environmental remediation work under the supervision of the Kansas Department of Health and Environment ("KDHE"), who finds or discovers material believed to be smelter residue material ("SRM") on the surface of any private property owned or leased by him, should collect the SRM, place it in special collection bins with lids to be provided by the City, and place the bin or bins at the curb for pick-up by the City. The City shall maintain specimens of the more common types of material known to be SRM that can be viewed for comparison purposes to determine if suspected material is SRM. Any person handling SRM shall follow protective precautions detailed in the Soil-Waste management Plan approved by KDHE.

REPEAL. All other ordinances in conflict herewith are hereby repealed.


EFFECTIVE DATE: This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Cherryvale, Kansas
this 6th day of May, 2019.



John M. Wright, Mayor

ATTEST:



Karen Davis, City Clerk

