

**CITY COMMISSION
CITY OF WALKER
KENT COUNTY, MICHIGAN**

Commissioner Versluis, supported by Commissioner Stek, moved the adoption of the following ordinance:

ORDINANCE NO. 07-554

**AN ORDINANCE TO AMEND THE CITY OF WALKER CODE
OF ORDINANCES BY AMENDING ARTICLE VII MINERAL
MINING OF CHAPTER 34 - ENVIRONMENT.**

THE CITY OF WALKER ORDAINS:

Section 1. Article VII - Mineral Mining of Chapter 34 - Environment of the City of Walker Code of Ordinances is hereby amended to read as follows:

ARTICLE VII. MINERAL MINING

DIVISION 1. GENERALLY /

Sec. 34-231. Title.

This article shall be known as and may be cited as the City of Walker Mineral Mining Control Ordinance.

(Code 1976, § 21-1)

Sec. 34-232. Findings; purpose.

The mining of sand, gravel and other minerals can be detrimental to persons and property within the city due to the noise, dirt and dust emitted as a result of mining operations. Further, mineral mining can result in permanent changes in the topographical and geological characteristics of the city which may in turn result in steep hillsides, shifting earth, groundwater and surface water impacts, drainage pattern alterations and other potentially hazardous conditions. To protect the health, safety, welfare and property of the residents of the city, this article establishes operational, maintenance, performance and reclamation standards and requirements for mineral mining operations and mineral mining sites, and requires that all mineral mining operations and sites obtain a license as provided by this article.

(Code 1976, § 21-2)

Sec. 34-233. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building official means the building official of the city.

Cessation of Mining means annual mining of less than 1,000 cubic yards of raw natural resource material, not including processed material, for a period of two consecutive years.

License means a mineral mining license as required by this article to commence or continue mineral mining operations within the city.

Mineral mining or *mining* means the excavation and removal of peat, gravel, sand, clay, marl or other soils, including overburden, or the transporting of those materials on a mining site, or the reclamation of the site after removal or excavation of materials. However, the following excavation activities are not included within the definition of mineral mining or mining and are exempt from the requirements of this article:

- (1) Excavation approved by a governmental body of competent jurisdiction in conjunction with the installation or maintenance of publicly owned or operated utilities, drainage facilities, roads, or other publicly owned or operated improvements, where the excavation is limited to the site of the publicly utility or improvement.
- (2) Excavation which by its nature is of limited scope and duration and which is undertaken primarily for the immediate use and development of the land excavated, such as for purposes of building construction, septic tanks, swimming pools, graves and similar limited excavations. However, any excavation which may exceed (or exceeds) 5,000 cubic yards of material to be removed from the site shall not qualify under this exemption and shall fully subject to the standards and requirements for mineral mining operations and sites, including, without limitation, the requirement that a license be obtained, as provided by this article.
- (3) Excavation in conjunction with farming operations conducted in accordance with generally accepted agricultural practices, including agricultural drainage work incidental to farming operations and irrigation or stock watering ponds, if no material is removed from the property.
- (4) Other excavations if the mineral mining review board determines in its discretion that the proposed excavation is unlikely to unreasonably interfere with the enjoyment of life or property and will not expose any person or property to the types of dangers inherent in mineral mining sought to be prevented by this article. The board's determination may be based on a review of the purpose, location, extent or duration of the proposed excavation and other factors which may bear on the potential of any excavation activity to adversely affect the public health, safety, or general welfare of the community.
- (5) Excavation of certain materials, including but not limited to coal and nonferrous metallic minerals, subject to exclusive State of Michigan regulation.

Site means a parcel or unit of land.

(Code 1976, § 21-3; Ord. No. 94-430, § 1, 3-8-94; Ord. No. 98-508, § 1, 2-9-98)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 34-234. Effect of article in relation to existing laws and ordinances.

This article is not intended to repeal or annul or to otherwise affect any existing law or ordinance unless expressly stated in this article. However, to the extent that any restrictions or standards imposed by this article are more stringent and restrictive than existing restrictions or

standards, this article shall control. This article shall control as to the restrictions and standards found in Article V, Chapter 34 of this Code, entitled "Soil Redistribution."

(Code 1976, § 21-4)

Sec. 34-235. Mineral mining review board.

A mineral mining review board is hereby created. The board shall consist of five members, as follows: the city engineer, the superintendent of the department of public works, the city planner, and two other members as appointed by the city commission from among other city staff or city officials (except the building official). The terms of the city engineer, the superintendent of the department of public works, and the city planner as members of the board shall correspond to their respective official tenures. The terms of each of the two members of the board appointed by the city commission from among city staff or city officials shall be for one year commencing on January 1, with eligibility for reappointment for unlimited successive terms (provided that if any member so appointed thereafter ceases to be employed by the city or ceases to be a city official, as applicable, that member's term shall then immediately end and the position shall be vacant unless another eligible person is appointed by the city commission to serve as an interim member until the following January 1). Meetings of the board shall be open to the public and shall be held as necessary to consider applications for licenses or to take other actions as provided by this article. Every action of the board shall be by a concurring vote of three members. The board shall keep a record of its proceedings, findings and determinations, which shall be a public record and shall be filed in the office of the city clerk. The board may establish rules to govern its procedures, and may call on any other city officials or boards for assistance in the performance of its duties.

(Code 1976, § 21-3; Ord. No. 94-457, § 1, 12-27-94)

Sec. 34-236. Actions or decisions of mineral mining review board final; exception.

Except as otherwise provided by section 34-239 with regard to actions or decisions of the mineral mining review board to suspend or revoke a license, all decisions of the board shall be final.

(Code 1976, § 21-35(a))

Sec. 34-237. Violation; notice of violation.

(a) It shall be unlawful for any person to operate or maintain a mineral mining operation or site regulated by this article, or cause such operation or maintenance to be done, except in full compliance with all of the provisions of this article and the terms or conditions of any license, permit or approval.

(b) Upon determining that there has been a violation under this article, the building official shall serve a notice of violation on the licensee directing the discontinuance of the illegal action or condition and the abatement of the violation. The notice of violation shall be in writing, shall specify the nature of the violation, and shall be mailed to the licensee at the address listed in the license application. The violation shall be abated within the

time specified in the notice of violation. The failure of the building official to provide a notice of violation shall in no way excuse a violation of this article.

(Code 1976, § 21-31)

Sec. 34-238. Unsafe condition; notice.

(a) All mineral mining operations or sites that are operated or maintained in a manner which is dangerous to human health or the public welfare are deemed unsafe.

(b) Upon receipt of notice from the building official that a mineral mining operation or site is being operated or maintained in an unsafe manner, operations at the site shall cease immediately. The notice of the unsafe condition shall be in writing, shall specify the nature of the conditions at the site deemed unsafe, and shall specify the circumstances under which the mining operations will be permitted to resume. The notice shall be given to the licensee, the licensee's agent, or other person in charge at the site. A copy of the notice shall also be mailed to the licensee at the address listed in the license application.

(c) Any person who shall continue any work at the site after a notice of unsafe condition has been issued, except work that the person has been directed to perform to remove an unsafe condition, shall be deemed in violation of this article.

(Code 1976, § 21-32)

Sec. 34-239. Appeal of actions of building official.

(a) A licensee that receives a notice of violation or a notice of unsafe condition may appeal the determination of the building official to the mineral mining review board, as provided by this section.

(b) The appeal of the building official's determination under this article must be in writing and must be received by the city within five days after the date that the notice was issued.

(c) The appeal of the building official's determination under this article must include a written statement as to why the licensee believes that the building official's determination of a violation or unsafe condition is incorrect.

(d) Upon receipt of the appeal, the mineral mining review board shall schedule a public hearing to review the building official's determination. Notice of the public hearing shall be given as provided by section 34-264(a).

(e) At the public hearing or within a reasonable time following the public hearing, the mineral mining review board shall make its decision to affirm or reverse the determination of the building official from which the appeal was taken. The board shall make written findings of fact in support of its decision.

(Code 1976, § 21-33)

Sec. 34-240. Municipal civil infraction.

(a) A person who violates any provision of this Article VII (including, without limitation, the failure to abate a violation for which a notice of violation has been issued or the failure to comply with a notice of unsafe condition) is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$1,000.00, plus costs and other sanctions, for each infraction.

(b) Repeat offenses shall be subject to increased fines as provided by section 1-11(c)(2) of this Code, except that as used in this section, "repeat offense" means a second (or and subsequent) municipal civil infraction violation of the same requirement or provision of this article (i) committed by a person within any 24-month period and (ii) for which the person admits responsibility or is determined to be responsible.

(c) The building official is hereby designated as the authorized city official to issue municipal civil infraction citations (directing alleged violators to appear in court) and municipal civil infraction violation notices (directing alleged violators to appear at the municipal ordinance violations bureau) for violations of this article as provided by this Code.

(Code 1976, § 21-36; Ord. No. 94-438, § 1, 9-13-94)

Cross references: General penalty for violations of Code and ordinances, § 1-11.

Sec. 34-241. Abatement of violations or unsafe conditions.

In addition to any other remedy available at law, violations of this article shall be deemed a nuisance per se and the city may bring an action for an injunction or other process against a person, or an agency of a person, to prevent, restrain, correct or abate any unsafe condition or violation of the provisions of this article.

(Code 1976, § 21-37)

Sec. 34-242. Reserved.

Editor's note: Ord. No. 94-438, § 2, adopted Sept. 13, 1994, repealed former § 34-242, which pertained to appearance tickets.

Secs. 34-243--34-260. Reserved.

DIVISION 2. LICENSE

Sec. 34-261. Required; issued on annual basis.

(a) After September 1, 1991, no person shall conduct mineral mining operations on any site within the city except in accordance with a license issued under this article. All licenses shall be issued on an annual basis and shall be valid only for an effective term running from March 1 (or from the date of issuance if later than March 1) through the last day of February of each license year (unless earlier suspended or revoked).

(b) For all mineral mining operations within the city which exist as of September 1, 1991, but which are not authorized as of that date by a valid permit or approval granted by the city under any other city ordinance, a license shall be obtained and the operations shall comply with the requirements of this article no later than March 1, 1992.

(c) For all mining operations which exist as of September 1, 1991, which are authorized as of that date by a valid permit or approval granted by the city under another city ordinance, but the permit or approval will not expire until after March 1, 1992, then the mining operations may continue in full compliance with the permit (including all permit terms, conditions of approval, approved plans and maps, and bond requirements) or approval until the date of expiration of the permit or approval without having obtained a license under this article by March 1, 1992. However, no person proceeding under this subsection shall continue mining operations after the date of expiration of the permit or approval except in accordance with a license issued under this article.

(d) For all mining operations which exist as of September 1, 1991, which are authorized as of that date by a valid permit or approval granted by the city under another city ordinance, but the permit will expire before March 1, 1992, then the mining operations may nevertheless continue until March 1, 1992, provided that the operator (and the property owner, if different than the operator) agrees in writing, and takes any other necessary actions, to continue to fully comply with all terms, conditions of approval, approved plans and maps, and bond requirements of the prior permit or approval. However, no person proceeding under this subsection shall continue mineral mining operations after March 1, 1992, except in accordance with a license issued under this article.

(Code 1976, § 21-5)

Sec. 34-262. Licenses nontransferable.

A license issued pursuant to this article shall be nontransferable, in whole or in part. If the property owner and the operator are not the same person, the license shall be applied for

by, and issued jointly to, the property owner and the operator, who shall be jointly responsible for compliance with any terms or conditions associated with the license.

(Code 1976, § 21-6)

Sec. 34-263. Application procedures.

The license application procedures set forth in this section shall be complied with prior to commencing any new mineral mining or prior to continuing any mineral mining which exists on September 1, 1991.

(1) The application for a license shall be made on forms provided by the city clerk.

(2) Ten copies of the completed application and required attachments shall be filed with the building official at least 30 days prior to the meeting of the mineral mining review board at which the application will first be considered by the board. The building official shall review the application and attachments to determine if the application contains the information and plans required by this article. In reviewing the application, the building official may consult with the city engineer and other city officials, as necessary. If the application is determined to be complete, the building official shall transmit the application to the board, along with any comments the building official or other city officials may have regarding the proposed mining operations.

(3) If the application is for an existing mineral mining operation or for renewal of a license previously granted under this article, the building official (with the assistance of the city engineer or any other city officials, as needed) shall physically inspect the site to determine compliance with the standards and requirements, conditions or plans provided by or required under this article as applicable to the site in question. The building official shall report the results of the site compliance inspection to the mineral mining review board.

(4) Fees as established by resolution of the city commission shall be paid by the applicant to the city treasurer at the time of filing the application for a license or for renewal of a license. Transmittals shall not be made unless the required fees have been paid in full. The amount of the fees shall be established by resolution of the city commission. No part of any fee paid to the city shall be refundable.

(5) The application filed with the building official shall provide the information and shall be accompanied by documents, plans and maps and other attachments, created and sealed by a professional engineer, as follows:

- a. The name of the owner of the site from which the materials will be mined or upon which the mining operations will take place.
- b. The name and address of the applicant for the license and the name and address of the applicant's professional engineer.

c. The name and address of the person who will be conducting the actual mining operations.

d. The location, size and legal description of the site and the area of the site from which the materials will be mined or upon which the mining operations will take place.

e. A detailed statement of the types of materials or resources to be mined, stockpiled or processed on the site or hauled away from the site.

f. A detailed statement of the proposed method of mining, stockpiling, processing or hauling.

g. The offsite route over which materials will be hauled to or from the site, including an identification of the truck routes in the area that will be used.

h. A description of the location, width and proposed surface treatment (gravel, paved, etc.) of all onsite roads, including driveway approaches.

i. A description of the types of machinery, equipment and facilities to be used at the site, where the machinery, equipment and facilities will be located on the site and the decibel level emitted by the equipment measured at a distance of 50 feet from the equipment.

j. The estimated number of years to complete mining and reclamation operations at the site and the number of phases, as applicable.

k. Any other information identified by the city as reasonably necessary to appraise the character and nature of the proposed mining operations.

l. An overall site plan, sealed by a professional engineer, of operation including a topographic survey map of the site drawn on a scale not less than one inch equals 200 feet showing on a four-foot contour interval existing grades of the land prior to any removal and grades of the proposed excavations subsequent to removal. The plan shall clearly show the area to be mined, including existing areas and roads within 100 feet of all property lines, areas for stockpiling, maintenance areas, berms, fencing, and similar use areas. The plan of operation shall be accompanied by a projected schedule of mining operations, including the following specific dates:

1. Commencement and completion of mining operations as provided by the plan of operation;

2. Commencement and completion of erosion and drainage control measures to be instituted during mining operations; and

3. Commencement and completion of fencing, roads, utilities, or any other structures or improvements to be located on the site as provided by the plan of operation.

m. A reclamation plan that has been sealed by a professional engineer. The plan of reclamation shall be submitted in three parts consisting of 1) a general plan of reclamation as an overlay or as a separate drawing; 2) a reclamation contour plat; and 3) a description of reclamation methods and materials proposed for restoration of topsoil and replanting. The general

plan of reclamation shall be presented at the same scale as the plan of operation and shall provide the following information:

1. The specific areas of land that have been completely reclaimed, if any, and the general areas of reclamation underway.
2. The location, type and quantity of land reclamation fill material must be shown on the plans. If compaction of fill for land reclamation purposes has taken place, results of compaction tests shall be provided to the mineral mining review board as part of the applicant's annual mineral mining permit application. Compaction tests must report a minimum 90% compaction rate for planned undeveloped areas and a minimum 95% compaction rate for planned development areas. Compaction test results shall be reported by a certified density technician.
3. The general areas currently used or proposed for use for topsoil overburden storage.
4. The general areas proposed for reclamation during the one-year license period.
5. The general areas proposed for storage for topsoil and overburden storage.
6. The acreage for each item shown on the overlay or separate drawing.
7. A reclamation contour plat with contour intervals not to exceed two feet indicating the general grade and slopes to which excavated areas will be reclaimed.
8. A description of the methods and materials proposed for restoration of topsoil to the required fertility and the amount of any type of planting that will be undertaken as a part of the reclamation plan.
9. The projected schedule of reclamation operations, including the following specific dates:
 - i. Commencement and completion of reclamation plan;
 - ii. Commencement and completion of erosion and drainage control measures to be instituted under the reclamation plan; and
 - iii. Commencement and completion of final grading, topsoil replacement, and replanting or landscaping as provided by the reclamation plan.
 - iv. Commencement and completion of land reclamation filling operations.
- n. Operation plans and reclamation plans shall be prepared to clearly depict and describe the sequence of mining operations, including existing conditions, mining underway, mining completed, reclamation underway, reclamation completed, mining proposed, reclamation proposed,

stockpiles, roadways, and similar land use elements. Operation plans and reclamation plans shall clearly identify and locate one or more permanent benchmarks as necessary to determine compliance of the mining operations or reclamation activities with the contours and elevations shown on the plans. All plans and maps required to be submitted as a part of the application shall be prepared and sealed by a registered civil engineer or land surveyor.

o. If the application is for an existing mineral mining operation or for renewal of a license previously granted under this article, the application shall include a statement regarding compliance with the minimum standards and requirements of division 3 of this article, and with other standards, requirements, conditions or plans which are applicable under this article to the site in question.

p. All application materials, including required plans and maps, will be reviewed to determine compliance and consistency with the minimum standards and requirements provided by division 3 of this article. Accordingly, applicants are strongly advised to thoroughly review those standards and requirements (as well as other provisions of this article) and to address any questions regarding applicable requirements or procedures to the building official prior to preparing or finalizing their application materials.

(Code 1976, § 21-7; Ord. No. 00-461, § 1, 7-24-00)

Sec. 34-264. Review and approval of applications.

(a) Upon receipt of a completed application from the building official, the mineral mining review board shall schedule a public hearing for consideration of the application. Notice of the public hearing shall be published and sent by mail or personal delivery to the applicant, to all persons to whom real property is assessed within 500 feet of the boundary of the property, and to the occupants of all structures within 500 feet. Notice of the public hearing as required by this section shall be given not less than five and not more than 15 days before the date of the public hearing.

(b) The mineral mining review board shall make its decision to grant, grant with conditions, or deny the application at the public hearing or within a reasonable time following the public hearing or any adjournment of the public hearing.

(c) The mineral mining review board's decision shall be incorporated in a statement of conclusions relative to the application under consideration. The statement shall specify the basis for the decision and any conditions imposed relating to an affirmative decision.

(d) All documents, plans and maps and other attachments to the license application which are approved by the mineral mining review board shall be incorporated in the terms of the license issued and shall be binding on the licensee. No mining operations shall be conducted on the site except in strict compliance with the documents, plans, maps and other application materials approved by the board, unless modified in writing by the board.

(e) No mining operations, including but not limited to grading, tree removal, soil stripping or other site improvements or changes, shall commence until a license has

been granted by the mineral mining review board as provided by this article. In the case of an existing operation, no mining operations shall continue for more than 180 days from the effective date of the ordinance from which this article is derived without a license, except as otherwise expressly provided by this article.

(Code 1976, § 21-8)

Sec. 34-265. Issuance.

- (a) If the mineral mining review board finds that the proposed mining operations will comply with the standards, requirements and conditions of this article, the board shall authorize the city clerk to issue a license, subject to any conditions of approval imposed by the board as provided by this article.
- (b) A license under this article shall be issued for a period not to exceed one year, beginning on the date of issuance.
- (c) A license issued as provided by this article shall not relieve the licensee from complying with any other applicable statutes, ordinances, rules or regulations.

(Code 1976, § 21-9)

Sec. 34-266. Renewal.

- (a) A license may be renewed by the mineral mining review board for successive periods not to exceed one year at a time.
- (b) To be considered for renewal, the applicant must submit a written request for renewal to the building official for transmittal to the mineral mining review board at least 60 days prior to the expiration date of the existing license. Included with the written request shall be the list of items noted in Section 34-263.
- (c) If the mineral mining review board determines that the mining operation meets all applicable standards, requirements and conditions under this article or under prior approved licenses and plans, the board may approve, or approve with conditions, the request for renewal. If the board determines that the mining operation fails to meet any applicable standard, requirement or condition, the board may deny the request for renewal.
- (d) No materials or minerals shall be extracted after the expiration of a license. However, if an application for renewal of an existing license is timely filed as required by subsection (b) and is thereafter diligently pursued by the applicant, mineral mining operations in compliance with the terms and conditions of the license may continue beyond the expiration of the license until either:
 - (1) The mineral mining review board approves the renewal of the license, in which case the mineral mining operations shall thereafter proceed only as permitted by the terms and conditions of the renewed license; or
 - (2) The mineral mining review board denies the application for renewal, in which case all mineral mining operations shall cease until a new license is issued as provided by this article.

(Code 1976, § 21-10)

Sec. 34-267. Conditions of approval.

- (a) In addition to the specific requirements provided by this article, the mineral mining review board may impose reasonable conditions on the issuance or renewal of a license. Conditions of approval may be imposed by the board as necessary to eliminate or mitigate any potentially adverse impacts of the mineral mining operations on adjacent or nearby property, on public services or facilities, or on the natural environment; to conserve natural resources and energy; to ensure that the mining operations will not create a nuisance or unreasonably interfere with the enjoyment of life or property; or to otherwise protect the public health, safety and general welfare of the community. The conditions may include, without limitation, conditions regarding the location, design or operation of a mining site.
- (b) In order to protect the public health, safety and welfare, the mineral mining review board may require the applicant to submit a geotechnical report that analyzes mining impacts on the local or regional groundwater aquifer or surface water bodies including wetlands, lakes, ponds, streams and rivers.
- (c) In order to protect the public health, safety and welfare, the mineral mining review board may require the applicant to submit a written statement of street sweeping and debris removal methods on public streets and within public rights of way, in accordance with practices approved by the City of Walker Department of Public Works.
- (d) The applicant may be required to apply for and receive the following: i) a soil erosion and sedimentation control permit from the City of Walker Engineering Department in accordance with Section 34-216.1, and/or ii) floodway district special approval in accordance with Section 42.36(c).
- (e) The conditions imposed by the mineral mining review board shall be in writing and incorporated in the terms of an approved or renewed license. The conditions shall remain unchanged except upon the mutual written consent of the board and the applicant.

(Code 1976, § 21-11)

Sec. 34-268. Performance guarantees.

- (a) The mineral mining review board shall require as a condition of approval of any license issued under this article that the applicant provide a performance guarantee in the form of a cash deposit, certified check, irrevocable bank letter of credit, or other type of security acceptable to the board. The performance guarantee shall name the city as the beneficiary in an amount established by the board. The performance guarantee shall be conditioned upon the prompt and complete compliance with all applicable provisions of this article and with the terms and conditions of a license issued by the board.
- (b) The performance guarantee must be deposited with the city clerk at the time that the license is approved and shall be kept continuously in effect by the applicant at all times during the mineral mining operations on the site and until there has been complete

compliance with all applicable requirements and conditions applicable to the mining operations or reclamation of the site. The mineral mining review board shall require the applicant to make whatever arrangements are necessary to ensure that the city will be notified in the event of any lapse in the effectiveness of the performance guarantee.

(c) The amount of the required performance guarantee shall be established by the mineral mining review board. In establishing the amount of the performance guarantee, the board shall consider the scale of the operations, the prevailing cost to rehabilitate the property if the operator defaults, court costs, and other reasonable expenses. For each acre restored and reclaimed in compliance with the requirements of this article, the board may allow the amount of the performance guarantee to be reduced on a pro rata basis as determined appropriate by the board.

(d) The performance guarantee shall be executed by the operator as the principal or applicant. If the operator and the property owner are different, the mineral mining review board may also require the property owner to execute the performance guarantee or to provide additional security as determined necessary by the board to ensure performance of the terms, conditions and requirements of a license.

(Code 1976, § 21-12)

Sec. 34-269. Waivers and modifications.

The mineral mining review board may waive or modify any requirement of this article which the board determines not necessary to protect the public health, safety and welfare and not necessary to meet the intent and purposes of this article, due to the scale, scope or nature of the particular mining operation under consideration. A waiver or modification made under this section shall be in writing with a basis for the same and incorporated in the terms of an approved or renewed license.

(Code 1976, § 21-13)

Sec. 34-270. Suspension or revocation.

(a) The mineral mining review board may suspend or revoke a license for the failure of a licensee to discontinue any violation under this article; for failure to abate a violation for which a notice of violation has been issued, for the failure to comply with a notice of unsafe condition, or for failure to comply with a term or condition of license approval. The decision to suspend or revoke a license shall be made at a public hearing held by the board.

(b) In determining whether to suspend or revoke a license, the mineral mining review board shall consider the type, nature, severity, frequency, duration, preventability, potential and actual effects of a violation on the public health, safety and welfare, and the violator's recalcitrance or efforts to comply. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered by the board. However, mitigating factors shall not be considered unless the board determines that the violator has made all good faith efforts to correct and terminate all violations. The fact that suspension or revocation of a license may cause the violator severe financial damage shall not be determinative of whether or not to suspend or revoke a license. The board shall make written findings of fact in support of its decision.

(Code 1976, § 21-34)

Sec. 34-271. Hearing.

Any person aggrieved by a decision of the mineral mining review board under section 34-270 to suspend or revoke a license shall have the right to a hearing before the city commission, provided that a written request for the hearing is filed with the city clerk within five business days after receipt of notice of the suspension or revocation. If the written request for a hearing is filed within the five-day period, the city commission shall hold a public hearing on the suspension or revocation of the license and shall have the power to reverse, affirm or modify the decision of the board. In making its determination, the city commission shall consider the factors provided by section 34-270, as well as any other applicable standards or requirements provided by this article. The city commission shall make written findings of fact in support of its decision. The decision of the city commission shall be final.

(Code 1976, § 21-35(b))

Secs. 34-272--34-290. Reserved.

DIVISION 3. OPERATION AND MAINTENANCE STANDARDS

Sec. 34-291. Applicability.

The minimum operational, maintenance, performance and reclamation standards and requirements provided by this division shall apply to all mineral mining sites, new or existing.

(Code 1976, § 21-14)

Sec. 34-292. Fencing and signs.

(a) All areas of a mining site which exceed a slope of five feet horizontal to one foot vertical shall be fenced with a four-foot-high fence and shall be posted with signs adequate to indicate the danger of trespassing in the area. The mineral mining review board may also require fencing or signs around all or any portion of the perimeter of a mining site or around any water areas, including retention ponds and settling ponds, as necessary to protect the public health, safety and welfare.

(b) The minimum specifications for site fencing shall be as follows: #9 gauge top wire; #12 gauge bottom wire with spacing of six inches by 12 inches. All stays shall be of #14 gauge wire. Support posts shall be spaced no greater than 16 feet apart.

(c) All fencing required pursuant to this section shall be maintained in good condition and repair at all times .

(Code 1976, § 21-15; Ord. No. 00-461, § 2, 7-24-00)

Sec. 34-293. Screening.

(a) All areas on the site being actively excavated shall be visually screened to a height of six feet from all adjacent public highways and adjacent parcels which are zoned residential and used for residential purposes. To determine whether the areas of active excavation are visually screened from adjacent public streets, visibility shall be evaluated based on the line of sight as viewed from points which are four feet above the nearest street paving. To determine whether areas of active excavation are visually screened from adjacent residential property, visibility shall be evaluated based on the line of sight as viewed from points which are six feet above the mean ground elevation of the adjacent residential property.

(b) The following methods are acceptable for screening of mining areas and may be used singly or in combination as necessary to achieve the required screening result:

(1) Construction of a raised earth berm area on the mining site along the boundary lines of the site where the boundary lines abut a public highway or abut privately owned property which is improved and occupied for residential purposes (including property upon which dwellings are built and occupied after the effective date of the ordinance from which this article is derived). The berm shall be of sufficient length and height to screen the mining area. During the planting season following the placement of the berm and as often as may be necessary to ensure the existence of a vegetative ground cover, the applicant shall seed or plant the berm in a manner suitable for the area and soil conditions to provide vegetation to check erosion and to provide a visible ground cover

substantially similar to the vegetation cover growing in adjacent fields. The slopes of the berm shall not exceed a slope of two feet horizontal to one foot vertical.

(2) Planting of coniferous trees along the boundaries of the property with sufficient rows and depth to permit effective screening of the mining area as required by this section.

(3) Construction of a fence of any material which is compatible with the character of the surrounding area. The fence shall provide at least an 80 percent solid visual barrier and shall be maintained in good repair.

(4) Use of other methods as determined by the board to be appropriate and sufficient to achieve the required screening, including the preservation of existing trees and other vegetation.

(c) The mineral mining review board may waive the screening requirements of this section to the extent that the topography of the area or other natural conditions act as a screen which meets the screening requirements of this section.

(Code 1976, § 21-16)

Sec. 34-294. Hours of operation.

(a) The maximum hours of operation of the mining operation shall be 7:00 a.m. to 6 p.m., Monday through Saturday. Mining operations shall not be permitted at any time on Sundays or legal holidays. The mineral mining review board may place further restrictions on the hours of operation as necessary to protect public health, safety and welfare.

(b) The days and hours of operation shall be posted at all times on a sign at the entrance of the site at a location approved by the mineral mining review board. The sign shall be six square feet in area and shall display the days and hours of operation with letters that are not less than four inches in height and that are readily visible from the public street.

(Code 1976, § 21-17; Ord. No. 00-461, § 3, 7-24-00)

Sec. 34-294.1. Temporary exception; hours of operation; loading and transporting.

(a) A licensee may request a temporary exception from the hours of operation prescribed by section 34-294 if hours other than those permitted in section 34-294 are necessary to load and transport sand, gravel, or other minerals to be used for a state or federal highway construction or improvement project within 20 miles of the mineral mining site. Any such request shall be filed with the building official and be governed by subsections (b) through (h) below.

(b) The licensee shall file an application and any associated review fee for a temporary exception, including, but not limited to, the requested hours of operation for loading and transporting, the state or federal highway project to be supplied with sand, gravel, or other minerals, the location of the highway project, the expected time of completion of the project, the necessity of the requested hours to supply the state or federal highway

project, and any measures designed to mitigate the impact of loading and transporting operations during the requested hours. Upon receipt of a completed application form from the building official, the mineral mining review board shall schedule a public hearing for consideration of the application for the temporary exception. Notice of the public hearing shall be given as provided in subsection 34-264(a).

(c) The mineral mining review board may grant, grant with conditions, or deny the application for a temporary exception at the public hearing or within a reasonable time following the public hearing.

(d) The application for a temporary exception may be granted or granted with conditions if the mineral mining review board finds as follows:

(1) The mineral mining operations comply and will comply with all standards, requirements, and conditions of this article other than section 34-294.

(2) The loading and transporting of sand, gravel, or other minerals from stockpiles during hours other than those permitted in section 34-294 is necessary to supply such minerals to a state or federal highway project within 20 miles of the mineral site.

(3) The temporary exception will not be of substantial detriment to adjacent properties and will not materially impair the intent and purposes of this article.

(e) If a temporary exception is granted, the mineral mining review board shall establish the permitted hours of loading and transporting operations and the date of expiration of the temporary exception. The mineral mining review board may also impose conditions on the grant of a temporary exception in accordance with section 34-267.

(f) The mineral mining review board's decision on the application for temporary exception shall be in writing and shall specify the basis for the decision and any conditions imposed relating to an affirmative decision. A temporary exception granted under this section shall be incorporated in the terms of an approved or renewed license.

(g) A temporary exception granted under this section shall not permit and shall not be construed to permit any excavation or other activities on the site during the hours established by the mineral mining review board except loading and transporting sand, gravel, or other minerals to the state or federal highway project. All loading shall be from stockpiles of sand, gravel, or other minerals on the site.

(h) A temporary exception under this section shall expire upon the earlier of: 1) the expiration of the annual license, 2) the completion of the state or federal highway project supplied by the mining site, if any, and 3) expiration of the temporary exception as specified by the conditions, if any, of the mineral mining review board.

(Ord. No. 98-521, § 1, 5-18-98)

Sec. 34-295. Access to public roadways.

All mineral mining sites shall have direct access to at least one street with a minimum right-of-way width of 60 feet. All driveway approaches providing access to the mineral mining site from a public street must be approved by the city engineer.

(Code 1976, § 21-18)

Cross references: Streets, sidewalks and other public places, Ch. 70.

Sec. 34-296. Onsite roads.

- (a) All onsite roads located within 400 feet of a residential dwelling shall be maintained by the operator to minimize the dust arising from the use of the roads through the application of chloride, water and/or similar dust retardant materials at sufficient intervals or by providing a paved or bituminous surface. The application of oil to onsite roads is prohibited.
- (b) To minimize the deposit from trucks of dirt and gravel onto a public street, a paved or bituminous surface shall be provided for all onsite entrance and exit drives for a distance into the site of not less than 300 feet from the public right-of-way.
- (c) All entrances and exits to the site shall be securely locked during hours when mining operations are not permitted on the site.

(Code 1976, § 21-19)

Cross references: Streets, sidewalks and other public places, Ch. 70.

Sec. 34-297. Machinery, equipment and facilities.

- (a) All machinery, equipment and facilities used in connection with the mining operations such as excavating, processing, stockpiling and hauling shall be used, operated and maintained in a manner to eliminate, to the maximum extent practicable, noises, vibrations, dust, or other adverse conditions which interfere with the reasonable use and enjoyment of surrounding property. Machinery, equipment and facilities which emit noise greater than 80 decibels measured at a distance of 50 feet are deemed to interfere with the reasonable use and enjoyment of surrounding property.
- (b) Machinery, equipment and facilities other than those specifically applied for and approved in the license shall not be permitted on the site.
- (c) Buffering and/or screening may be required to minimize the effect of noise, vibrations, dust or other adverse conditions created by the machinery, equipment, or facilities.

(Code 1976, § 21-20)

Sec. 34-298. Transportation vehicle standards.

- (a) All vehicles used to transport excavated material shall be loaded in a manner so that the material cannot be unintentionally discharged from the vehicle. Vehicles shall be cleaned of all material not in the load-bed prior to entering the public streets.
- (b) If mining materials are deposited or spilled off site, it shall be the responsibility of the licensee, without requiring any action or request by the city, to immediately remove the spilled or deposited material.

(Code 1976, § 21-21)

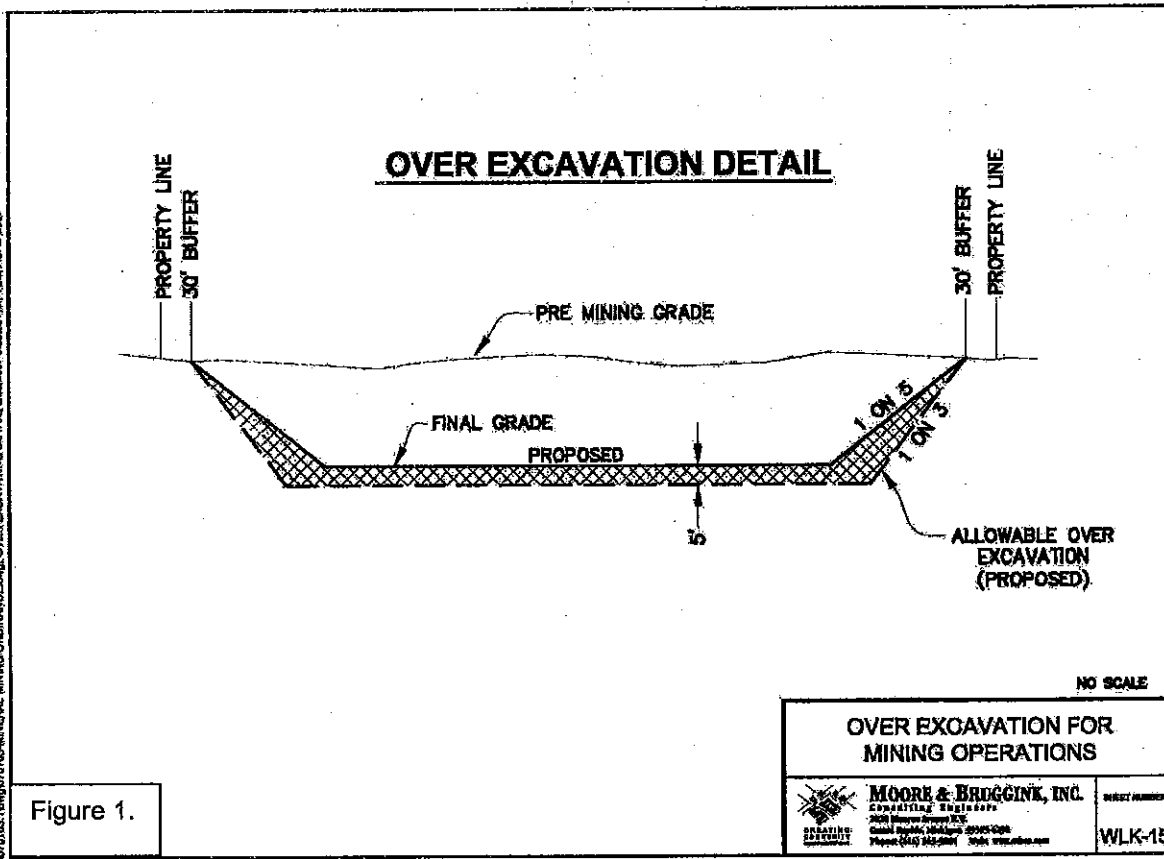
Cross references: Traffic and vehicles, Ch. 82.

Sec. 34-299. Lighting.

All lighting used to illuminate the mining area, access roads, stockpile areas, and other areas used in connection with the mining operations shall be directed away from surrounding property. The board may also require that lighting be shielded if the lighting shines directly toward a residential use or a street.

(Code 1976, § 21-22)

Sec. 34-300. Location of cuts. Undercutting Regulations.



(a) No cut shall be made which creates a pit or depression closer than 50 feet measured from the nearest street right-of-way, nor closer than 30 feet to the nearest property line. However, the board may prescribe more strict requirements regarding the location of cuts as necessary to provide lateral support to surrounding property as required by soil or geographic conditions, or as otherwise necessary to preserve the public health, safety or general welfare.

(b) All vegetation shall be maintained within, and no vegetation shall be removed from, the area of a site that is within 50 feet of a street right-of-way line or within 30 feet of any other property line.

- (c) Undercutting is not allowed below the approved reclamation contour, except as noted in Figure 1 and subject to all standards of this Article for material and compaction testing. If additional mining material is located beneath the proposed grades of the approved mineral mining site plan, the licensee must amend its approved mining and reclamation plans to reflect this change.

(Code 1976, § 21-23; Ord. No. 00-461, § 4, 7-24-00)

Sec. 34-301. Drainage and erosion control.

(a) All excavations shall be made either to a water-producing depth of at least ten feet below the low water mark for at least 80 percent of the water area, or shall be graded or backfilled with nonhazardous, nonradioactive, noninflammable, and noncombustible materials, to ensure that:

(1) The excavated area shall not collect and permit stagnant water to remain; and

(2) The surface of any area which is not permanently submerged is graded or backfilled as necessary to reduce peaks and depressions and to produce a gently rolling surface that will minimize erosion due to rainfall and will be in substantial conformity with adjoining land areas.

(b) Surface water shall be directed in a manner so as not to interfere with the adjoining property owners. However, the maintenance of the natural flow of surface water shall not be deemed an interference with adjoining property.

(c) Erosion control measures shall be instituted to comply with the Soil Erosion and Sedimentation Control Act (Part 91 of Act 451 of the Public Acts of Michigan of 1994, as amended; MCL 324.9101 et seq., as amended (formerly, Act No. 347 of the Public Acts of Michigan of 1972, as amended)) and Article VI, Chapter 34 of this Code.

(Code 1976, § 21-24; Ord. No. 95-470, § 9, 10-24-95)

Sec. 34-302. Treatment of banks.

(a) The banks of all excavations shall be sloped to the water line in a water-producing excavation, and to the pit floor in a dry operation, at a slope to a degree not less than that required to prevent accelerated erosion and to a degree sufficient to maintain vegetation. In no event shall the finished slopes of banks exceed a slope of five feet horizontal to one foot vertical.

(b) The banks of all excavations shall be reclaimed with vegetation as required by this article.

(Code 1976, § 21-25)

Sec. 34-303. Vegetation reclamation.

Vegetation shall be reclaimed by the use of sufficient soil and overburden and by appropriate seeding of grasses or planting of shrubs or trees on all areas of the site except areas which will be submerged under water or within 25 feet of the shoreline of submerged areas.

(Code 1976, § 21-26)

Cross references: Vegetation, Ch. 90.

Sec. 34-304. Stockpiling and replacement of topsoil.

If topsoil exists which is suitable for growing turf or other vegetation at the time the mining operations are scheduled to begin, a sufficient quantity of topsoil shall be stockpiled on the site so that when mining operations are completed the entire site may be recovered with a minimum of four inches of topsoil. The replacement of topsoil shall be made immediately following the termination of the mining operations or a phase of the operations, as applicable. However, if the mining operations continue for more than 30 days, the operator shall replace the stored topsoil over areas which have been stripped of topsoil as the operations progress. The topsoil shall be replaced in a manner suitable for growing turf or other vegetation.

(Code 1976, § 21-27)

Sec. 34-305. Fill material.

If filling of the mined area is necessary during reclamation, only inert material (as defined by the Solid Waste Management Act (Part 115 of Act 451 of the Public Acts of Michigan of 1994, as amended; MCL 324.11501 et seq., as amended (formerly Act No. 641 of the Public Acts of Michigan of 1978, as amended)) shall be used. All fill material brought onto the site must be certified as inert material by the site operator and the applicant's professional engineer and identified by location, type and amount on the applicant's annual mineral mining review board application and site reclamation plans. Compaction of fill for land reclamation purposes must be completed by the site operator. Results of compaction tests shall be provided to the mineral mining review board as part of the applicant's annual mineral mining permit application or as provided in Section 34-308. Compaction tests must report a minimum 90% compaction rate for planned undeveloped areas and a minimum 95% compaction rate for planned development areas. Compaction test results shall be reported by a certified density technician. The planned undeveloped and development areas must match those shown on the reclamation plan.

(Code 1976, § 21-28; Ord. No. 95-470, § 10, 10-24-95)

Sec. 34-306. Termination of operations and reclamation.

Upon termination or cessation of mining operations, the licensee shall be responsible to reclaim the site in accordance with reclamation plans approved by the mineral mining review board. If the licensee fails to reclaim the site as required by the approved reclamation plans, the city may come upon the site and reclaim the land in accordance with those plans and may use, without limitation, the proceeds of the performance guarantee posted as required by this article to defray the costs of the reclamation.

(Code 1976, § 21-29)

Sec. 34-307. Onsite Uses Permitted For One Year Following Cessation of Mining Activities.

- (a) Storage and stockpiling of previously mined products after cessation of mining activities may be permitted by the mineral mining review board for one annual license granted for that limited purpose. In no event shall any additional materials be allowed to be added to these stockpiles. A license granted for storage or stockpiling of mined products shall not interfere with or excuse site reclamation as otherwise required under this article.
- (b) Storage and stockpiling of materials previously mined on site may be permitted by the mineral mining review board for a maximum of one year following the cessation of onsite mining operations.

Sec. 34-308. Permanent Close Out of All Onsite Activities.

- (a) Notwithstanding the activities permitted under Section 34-307, all mining operations are required to undergo a final review by the mineral mining review board to close out all onsite activities and active licenses and before any performance guarantee is discharged or released.
- (c) The application and public hearing process for the final close out of all onsite activities will follow that for an annual mineral mining permit.
- (d) The following must be supplied on site plans, sealed by a professional engineer, by the applicant to the mineral mining review board:
 - a. Sealed, surveyed as-built plans, showing reclaimed contours at 2-foot contour intervals.
 - b. A sealed, engineered soil erosion and permanent soil stabilization plan.
 - c. A list of, and locations for, vegetative site restoration methods.
 - d. The location of, and future plans for, all onsite driveways, catch basins, culverts, drains and other appurtenances.
 - e. The location of, and removal plan for, all onsite signage.
 - f. The location of, and removal plan for, all onsite buildings, equipment and other related items.
 - g. The location of, and grading plan for, all future public roads.
 - h. Compaction tests reporting a minimum 90% compaction rate for planned undeveloped areas and a minimum 95% compaction rate for planned development areas. Compaction test results shall be reported by a certified density technician. The planned undeveloped and development areas must match those shown on the reclamation plan.
 - i. Documentation that all onsite oil wells have been cut to the reclamation topography.

- (e) Prior to the public hearing, the City Engineer and DPW Director will conduct an onsite inspection to determine compliance with the as-builts and reclamation plans.
- (f) Compliance with any conditions of approval attached to the close out review is required before any performance guarantee is discharged or released.

(Code 1976, § 21-30)

Secs. 34-309--34-330. Reserved.

Section 2. Severability.

The various parts, sections, and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.


Section 3. Effective Date.

This Ordinance shall become effective immediately upon publication in a newspaper in general circulation within the City of Walker.


First Reading: 11/26/2007

Second Reading: 12/10/2007

Effective Date: Upon Publication



Robert J. VerHeulen, Mayor



Sarah Bydalek, City Clerk