

ARTICLE VI. SOIL EROSION AND SEDIMENTATION PREVENTION*

***Editor's note:** Ord. No. 02-486, § 1, adopted April 8, 2002, amended art. VI in its entirety and enacted similar provisions as set out herein. The former art. VI derived from Ord. No. 94-441, § 2, adopted Sept. 13, 1994; Ord. No. 95-470, §§ 1--8, adopted Oct. 24, 1995; and Ord. No. 99-539, §§ 1--22, adopted Sept. 28, 1999.

Cross references: Buildings and building regulations, ch. 18; floods, ch. 42; flood damage prevention, § 42-26 et seq.; planning, ch. 58; subdivisions, ch. 74; malicious destruction of soil, § 90-2; zoning, ch. 94.

Sec. 34-206. Purpose.

This article provides for the control of soil erosion and sedimentation within the city as authorized by part 91, soil erosion and sedimentation control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("part 91"), and the Soil Erosion and Sedimentation Control Rules (Michigan Administrative Code, R323.1701 et seq., as amended) promulgated pursuant to part 91.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-207. Rules adopted.

The soil erosion and sedimentation control rules are hereby adopted by reference and made a part of this article as if fully set forth herein.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-208. Effect of article in relation to the Soil Erosion and Sedimentation Control Act and the soil erosion and sedimentation control rules.

To the extent that any provisions or requirements of this article are more restrictive than, or are in addition to, the provisions or requirements of part 91 or the soil erosion and sedimentation control rules, this article shall control.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-209. Definitions.

- (a) Unless expressly given a different meaning by this article, the terms defined in part 91 and the soil erosion and sedimentation control rules have the same meanings when used in this article.
- (b) As used in this article:
 - (1) *Act 451* means Public Act No. 451 of the Public Acts of 1994, as amended.
 - (2) *City* means the City of Walker.

- (3) *City engineer* means the city engineer for the City of Walker or any person designated by the city engineer to act on his behalf in the administration and enforcement of this article.
- (4) *Earth change* means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
- (5) *Lake* means the Great Lakes and all natural and artificial inland lakes or impoundments that have definite banks, a bed, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, one acre. Lake does not include sediment basins and basins constructed for the sole purpose of stormwater retention, cooling water, or treating polluted water.
- (6) *Part 91* means part 91, soil erosion and sedimentation control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, being MCL 324.9101 et seq.).
- (7) *Rules* means the rules promulgated by the Michigan Department of Environmental Quality pursuant to the Act.
- (8) *Sediment* means the solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.
- (9) *Soil erosion* means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, and gravity.
- (10) *Stream* means a river, creek, or other surface watercourse which may or may not be serving as a drain as defined in Act. No. 40 of the Public Acts of 1956, as amended, being MCL 280.1 et seq., and which has definite banks, a bed, and visible evidence of the continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.
- (11) *Violation of this article or violates this article* means a violation of part 91, the rules, a permit issued under this article, or this article.
- (12) *Waters of the state* means the Great Lakes and their connecting waters, inland lakes, and streams as defined in the rules, and wetlands regulated under part 303 of Act 451.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-210. Local enforcing agency.

The city engineer is hereby designated as the municipal enforcing agency responsible for the administration and enforcement of part 91, the rules, and this article within the city.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-211. Scope.

Except as expressly exempted by part 91 or the rules, this article applies to any earth change within the city which:

- (1) Disturbs one or more acres of land; or
- (2) Is within 500 feet of the water's edge of a lake or stream, regardless of the amount of land disturbed.

As used in all subsequent sections of this article, the term "earth change" is limited in meaning to an earth change which meets the criteria of this section.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-212. Permit and approved plan required.

After the effective date of this article [April 22, 2002], no person shall maintain or undertake an earth change on any land within the city except in accordance with an earth change permit and approved soil erosion and sedimentation control plan as provided by part 91, the rules, and this article.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-213. Permit application and review procedures and requirements.

- (a) An application for an earth change permit shall be submitted to the city engineer by the owner of the land upon which the earth change is proposed to be made (or by the owner's authorized agent).
- (b) The application shall be accompanied by an application review fee made payable to the city treasurer in the amount provided by the fee schedule adopted by the resolution of the city commission.
- (c) The application shall also be accompanied by a soil erosion and sedimentation control plan which includes the following required data:
 - (1) A vicinity sketch of the site location and the proximity of any proposed earth change to the surface waters of the state (or to drains or storm water inlets leading directly to the surface waters of the state).
 - (2) A boundary line survey or legal description of the site.
 - (3) The name, address, and telephone number of the landowner (or authorized agent), and of the developer (if different than the landowner).
 - (4) A plan of the site at a scale of not more than 100 feet to an inch (or as otherwise determined adequate by the city engineer), showing existing topography (or slope description) at five-foot intervals.
 - (5) A soil survey map or written description of the soil types of the exposed land area contemplated for the earth change.
 - (6) Details for the proposed earth change including:
 - a. A description of the location of the physical limits of each proposed earth change.

- b. A description of the location of all existing and proposed on-site drainage and dewatering facilities.
 - c. The timing sequence of each proposed earth change, such as starting and completion dates of the development sequence and time exposure of each area prior to the completion of effective soil erosion and sediment control measures.
 - d. The location and description for installing and removing all proposed temporary soil erosion and sedimentation control measures and their estimated cost.
 - e. A description and the location of all proposed permanent soil erosion and sedimentation control measures and their estimated cost.
 - f. A statement of the quantity of the excavation and fill involved.
 - g. A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control facilities which remain after the project completion, including the designation of the person or organization responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion and sedimentation control measures are located.
 - h. Other information or data as may be required by the city engineer, such as a soil investigation report which shall include, without limitation, data regarding nature, distribution, and supporting ability of existing soils and rock on site.
- (d) The soil erosion and sedimentation plan shall be reviewed by the city engineer (or by a person trained and experienced in soil erosion and sedimentation control techniques, as designated by the city engineer).
- (e) All earth changes shall be designed, constructed, implemented and maintained in accordance with the minimum requirements for earth changes as provided by part 91, the rules, and this article, and shall also comply with any structural, vegetative, or managerial practices to effectively prevent or reduce soil erosion and sedimentation as determined necessary by the city engineer. In determining the adequacy and effectiveness of the design, implementation and maintenance of proposed soil erosion and sedimentation control measures for purposes of this article the city engineer shall consider:
- (1) Site specific factors and information of the type required to be included in the soil erosion and sedimentation control plan for the property; and
 - (2) The specification and recommendations regarding soil erosion and sedimentation control measures and practices as provided by the "Guidebook of Best Management Practices for Michigan Watersheds", published by the Surface Water Quality Division, Michigan Department of Environmental Quality ("BMP guidebook"). A complete copy of the BMP guidebook shall be kept available for public inspection at the building department at Walker City Hall.
- (f) The city engineer shall approve, disapprove or require modification of the application for

the earth change permit and accompanying plan within 30 calendar days following receipt of a complete application. Notification of approval or disapproval shall be made by certified mail. If the application is disapproved, the city engineer shall advise the applicant of the reasons for disapproval and conditions required for approval. The requirement of notification by certified mail is not necessary if the application is personally given written approval or disapproval of the application.

- (g) An earth change permit shall not be issued where:
 - (1) The proposed work would cause uncontrolled soil erosion and sedimentation; or
 - (2) The proposed work would cause hazards to the public safety and welfare; or
 - (3) The work, as proposed by the applicant, will damage any public or private property or interfere with any existing drainage course in such a manner as to cause damage to any adjacent property or result in the deposition of debris or sediment on any public way or into any stream or create an unreasonable hazard to persons or property; or
 - (4) The land area for which work is subject to geological hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability or any other such hazard to persons or property; or the land area for which the work is proposed lies within the 100-year floodplain of any stream or watercourse (not specifically designated and delineated by the county as an area subject to flood hazard), unless a permit from the Michigan Department of Environmental Quality accompanies the application and a hydrologic report prepared by a licensed and professional engineer is submitted to certify that the proposed work will have, in the city engineer's opinion, no detrimental influence on the public welfare for upon the total development of the watershed.
- (h) No earth change permit shall be issued until the applicant has paid applicable permit and inspection fees to the city treasurer in accordance with the fee schedule adopted by resolution of the city commission. The city engineer shall calculate the fee after reviewing the application and plan.
- (i) Upon a determination by the city engineer that an applicant has met all applicable requirements under this article and other applicable laws and regulations, and that the applicant has paid all applicable fees, the city engineer shall issue a permit for the proposed earth change. The permit shall be kept available on the site of the proposed earth change at all times for inspection by the city.
- (j) If the earth change for which a permit has been issued has not been commenced within one year from the date of issuance of the permit, the permit shall lapse, provided that the city engineer may extend the time for commencement of the earth change if the permittee requires an extension prior to the expiration of the initial period and not material change of circumstances has occurred.
- (k) An earth change permit issued under this article shall not relieve the permittee from complying with any other applicable statutes, ordinances, rules or regulations.
- (l) The failure to comply with any term or condition of an approved permit or to timely complete all work as set forth in an approved plan constitutes a violation of this article.

- (m) An "authorized public agency" as defined by part 91 is exempt from obtaining an earth change permit but shall notify the city in advance of each proposed earth change.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-214. Deposit.

- (a) No permit shall be issued by the city under this article unless the applicant first posts a deposit with the city treasurer in the form of cash, a certified check, or an irrevocable letter of credit, whichever the applicant selects, or a surety bond acceptable to the city, subject to the following:
 - (1) The deposit shall be in a form approved and furnished by the city. The deposit shall be in the amount sufficient to assure the installation and completion of such protective or corrective measures as required by the city.
 - (2) As a condition of the deposit, the applicant shall be required to comply with all provisions of this article, the terms and conditions of the permit, and complete all work set forth in the plan within the time specified in the permit (or, if no time limits is so specified, within 180 days after the date of issuance of the permit).
- (b) If the applicant fails to complete the work as provided by subsection 34-214(a)(2), the city is authorized to cause the work to be completed in accordance with the plan covered by the permit, and the necessary and reasonable costs and expenses so incurred or expended, including the incidental administrative and legal costs, shall be the obligation of and paid by the applicant and surety. In the case of an application having deposited cash, a certified check, or an irrevocable bank letter of credit, the application shall be refunded any portion thereof not used for the aforesaid costs and expenses.
- (c) The city engineer is authorized to grant the permittee an extension of time to complete the work shown in the plan upon the applicant's written request showing good cause for the need of the extension prior to the expiration of the time required for completion of the plan.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-215. Inspections.

- (a) The city engineer (or a person trained and experienced in soil erosion and sedimentation control techniques, as designated by the city engineer) shall inspect all work covered by an earth change permit issued pursuant to this article and is hereby authorized to enter property in the city covered by a permit for the purpose of performing any duties under this article. Inspection fees shall be paid as provided according to the fee schedule adopted by resolution of the city commission.
- (b) The city engineer, or any person designated by the city engineer, may enter at all reasonable times in or upon any private or public property for the purpose of inspection and investigating conditions or practices that may be a violation of part 91, the rules, or this article.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-216. Permit required prior to issuance of building permit.

A building permit shall not be issued for any property upon which an earth change permit is required until the earth change permit has been issued for the property as provide by this article.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-216.1 Logging, mining, land plowing or tilling and permit exemption.

- (a) A person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this article. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this article. The exemption from obtaining a permit under this subsection does not include either of the following:
 - (1) Access roads to and from the site where active mining or logging is taking place.
 - (2) Ancillary activities associated with logging and mining.
- (b) This article does not apply to metallic mineral mining activity that is regulated under a mining and reclamation plan that contains soil erosion and sedimentation control provisions and that is approved by the Michigan Department of Environmental Quality (MDEQ).
- (c) A person is not required to obtain a permit from the city for earth changes associated with well locations, surface facilities, flow lines, or access roads relating to oil or gas exploration and development activities regulated under part 615 of Act 451, if the application for a permit to drill and operate under part 615 contains a soil erosion and sedimentation control plan that is approved by the Michigan Department of Environmental Quality (MDEQ) under part 615. However, those earth changes shall conform to the same standards as required for a permit under this article. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a of Act 451.
- (d) As used in this section, "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-216.2. Reduction of soil erosion or sedimentation by owner.

- (a) A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion and sedimentation from the land on which the earth change has been made.
- (b) This section is effective whether or not an earth change permit is required by this article.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-217. Notice of violation; cost recovery.

- (a) If the city engineer determines that soil erosion and sedimentation of the waters of the state has or is reasonably likely to occur from a parcel of land in violation of this article, the city engineer shall notify the person who owns the land by mail, with return receipt requested, of that determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with this article.
- (b) Within five days after the notice of violation is mailed, the landowner shall implement and maintain soil erosion and sedimentation control measures in conformance with this article, as specified by the notice or as otherwise determined adequate by the city engineer to prevent soil erosion and sedimentation of the waters of the state.
- (c) If after five days from the date that a notice of violation is mailed, the condition of the land, in the opinion of the city engineer, may result in or contribute to soil erosion and sedimentation of the waters of the state, and if soil erosion and sedimentation control measures in conformance with this article are not in place, the city (or its designee) may enter upon the land and construct, implement and maintain soil erosion and sedimentation control measures in conformance with this article. The city shall not expend more than \$10,000.00 for the cost of the work, materials, or labor unless the notice of violation contained written notice that such costs might exceed \$10,000.00. Further, if more than \$10,000.00 is to be expended under this section, then the work shall not begin until at least ten days after the notice of violation is mailed.
- (d) All expenses incurred by the city under this section to construct, implement, or maintain soil erosion and sedimentation control measures to bring the land into conformance with this article shall be reimbursed to the city by the person who owns the land. The costs recovered by the city shall be in addition to any civil fines, damages, expenses or costs payable to the city as a result of a violation. Further, the abatement by the city of a violation of this article and subsequent recovery of costs incurred by the city shall not be a defense to any action by the city against any person for the violation, including without limitation, any action by the city to collect civil fines, damages, expenses or costs as authorized by law.
- (e) The city shall have a lien for the expenses incurred under this section in bringing the land in to conformance with this article. With respect to single or multifamily residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of the expenditure. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, Act No. 206 of the Public Acts of 1893, being MCL 211.1--211.157.
- (f) If the city has notice that a violation of this article has occurred within the boundaries of the city (including, but not limited to, a violation attributable to an earth change by an authorized public agency), the city shall notify the Michigan Department of Environmental Quality (MDEQ) of the violation.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-218. Enforcement authority.

Upon a finding that there has been a violation of any provision, requirement or condition of this article (or of any permit or plan issued or approved under this article), the city engineer may take any enforcement action authorized by part 91, the rules, this article, or by other applicable laws, regulations and ordinances. In addition to other remedies provided in this article, the city engineer's enforcement authority includes, without limitation, the ability to issue cease and desist orders and to revoke earth change permits. Failure to comply with a cease and desist order or revocation of an earth change permit shall constitute a violation of this article.

(Ord. No. 02-486, § 1, 4-8-02)

Sec. 34-219. Municipal civil infraction.

- (a) A person who violates any provision of this article is responsible for a municipal civil infraction, subject to payment of a civil fine of not more than \$2,500.00, plus costs and other sanctions.
- (b) A person who knowingly violates any provision of this article or knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of not more than \$10,000.00 for each day of violation.
- (c) A person who knowingly violates any provision of this article after receiving a notice of determination under Section 34-217 is responsible for the payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of violation.
- (d) Civil fines collected under subsections (a), (b), and (c) above shall be deposited with the city.
- (e) A default in the payment of a civil fine or costs ordered under this section or an installation of the fine or costs may be remedied by any means under the Revised Judicature Action of 1961, as amended (MCL 600.101 et seq.).
- (f) Notwithstanding the existence of any other remedy, the city may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of part 91, the rules, or this article.
- (g) In addition to a fine assessed under this section, a person who violates this article is liable to the state for damages for injury to, or destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their conditions as existing immediately prior to the violation.
- (h) Each day on which a violation of this article continues constitutes a separate violation and shall be subject to sanctions or penalties as provided in this section as a separate violation.
- (i) The city engineer and any person designated by the city engineer to act on his behalf in the administration and enforcement of this article are hereby designated as the authorized city officials 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 City of Walker Municipal Ordinance Violations Bureau) for violations of this article as provided by this code.

(Ord. No. 02-486, § 1, 4-8-02)

Secs. 34-220--34-230. Reserved.

ORDINANCE NO. 06-543

AN ORDINANCE TO AMEND SECTIONS 34-209, 34-210, 34-212, 34-213, 34-214, 34-215, 34-216, 34-216.2 AND 34-219, AND TO ADD SECTION 34-216.3 TO ARTICLE VI, CHAPTER 34 OF THE CODE OF ORDINANCES, CITY OF WALKER

THE CITY OF WALKER ORDAINS:

Section 1. Amendment of Section 34-209.

Section 34-209 of Chapter 34 of the City of Walker, Code of Ordinances (“City Code”) is hereby amended to read in its entirety as follows:

Sec. 34-209. Definitions.

(a) Unless expressly given a different meaning by this article, the terms defined in part 91 and the soil erosion and sedimentation control rules have the same meanings when used in this article.

(b) As used in this article:

- (1) “Act 451” means Public Act No. 451 of the Public Acts of 1994, as amended.
- (2) “City” means the City of Walker.
- (3) “City engineer” means the city engineer for the City of Walker or any person designated by the city engineer to act on his behalf in the administration and enforcement of this article.
- (4) “Earth change” means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

- (5) “Gardening” means activities necessary to the growing of plants for personal use consumption or enjoyment.
- (6) “Lake” means the Great Lakes and all natural and artificial inland lakes or impoundments that have definite banks, a bed, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, one acre. “Lake” does not include sediment basins and basins constructed for the sole purpose of stormwater retention, cooling water, or treating polluted water.
- (7) “Part 91” means part 91, soil erosion and sedimentation control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, being MCL 324.9101 et seq.).
- (8) “Rules” means the rules promulgated by the Michigan Department of Environmental Quality (MDEQ) pursuant to Part 91.
- (9) “Seawall maintenance” means an earth change activity landward of the seawall.
- (10) “Sediment” means the solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.
- (11) “Soil erosion” means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, and gravity.
- (12) “Stream” means a river, creek, or other surface watercourse which may or may not be serving as a drain as defined in Act. No. 40 of the Public Acts of 1956, as amended, being MCL 280.1 et seq., and which has definite banks, a bed, and visible evidence of the continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.

- (13) “Violation of this article” or “violates this article” means a violation of Part 91, the rules, a permit issued under this article, or this article.
- (14) “Waters of the state” means the Great Lakes and their connecting waters, inland lakes, and streams as defined in the rules, and wetlands regulated under Part 303 of Act 451.

Section 2. Amendment of Section 34-212.

Section 34-212 of Chapter 34 of the City Code is hereby amended to read in its entirety as follows:

Sec. 34-212. Permit and approved plan required; effect of property transfer; fee for transfer of permit.

(a) After the effective date of this article [April 22, 2002], no person shall maintain or undertake an earth change on any land within the city except in accordance with an earth change permit and approved soil erosion and sedimentation control plan as provided by Part 91, the rules, and this article. The owner of property that is subject to a permit under this article is responsible for compliance with the terms of the permit that apply to that property.

(b) Except as provided in subsection (c), if property subject to a permit under this article is transferred, both of the following are transferred with the property:

- (1) The permit, including the permit obligations and conditions.
- (2) Responsibility for any violations of the permit that exist on the date the property is transferred.
- (3) The obligation to post a deposit pursuant to Section 34-214.

(c) If property is subject to a permit under this article and a parcel of the property, but not the entire property, is transferred, both of the following are transferred with the parcel:

- (1) The permit obligations and conditions with respect to that parcel, but not the permit itself.

- (2) Responsibility for any violations of the permit with respect to that parcel that exist on the date the parcel is transferred.

In such event, the deposit posted for the permit pursuant to Section 34-214 shall remain in full force and effect for that parcel unless the new owner of that parcel posts a deposit satisfactory to and approved by the city pursuant to Section 34-214.

(d) If property subject to a permit under this article is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the MDEQ and provided by the city. The notice shall inform the transferee of the requirements of section 34-212 and, as applicable, subsections (b) or (c) above. The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the city before the property is transferred.

(e) The city may charge a fee for the transfer of a permit under subsection (b) or (c) above. The fee shall not exceed the administrative costs of transferring the permit. Fees collected under this subsection shall only be used for the enforcement and administration of this article by the city.

Section 3. Amendment of Section 34-213.

Section 34-213 of Chapter 34 of the City Code is hereby amended to read in its entirety as follows:

Sec. 34-213. Permit application and review procedures and requirements.

(a) An application for an earth change permit shall be submitted to the city engineer by the owner of the land upon which the earth change is proposed to be made (or by the owner's designated agent).

(b) The application shall be accompanied by an application review fee made payable to the city treasurer in the amount provided by the fee schedule adopted by the resolution of the city commission.

(c) The application shall also be accompanied by a soil erosion and sedimentation control plan which includes the following required data:

- (1) A vicinity sketch of the site location and the proximity of any proposed earth change to the surface waters of the state (or to drains or storm water inlets leading directly to the surface waters of the state).
- (2) A boundary line survey or legal description of the site.
- (3) The name, address, and telephone number of the landowner (or authorized agent), and of the developer (if different than the landowner).
- (4) A plan of the site at a scale of not more than 100 feet to an inch (or as otherwise determined adequate by the city engineer), showing existing topography (or slope description) at two-foot intervals.
- (5) A soil survey map or written description of the soil types of the exposed land area contemplated for the earth change.
- (6) Details for the proposed earth change including:
 - a. A description of the location of the physical limits of each proposed earth change.
 - b. A description of the location of all existing and proposed on-site drainage and dewatering facilities.
 - c. The timing sequence of each proposed earth change, such as starting and completion dates of the development sequence and time exposure of each area prior to the completion of effective soil erosion and sediment control measures.
 - d. The location and description for installing and removing all proposed temporary soil erosion and sedimentation control measures and their estimated cost.

- e. A description and the location of all proposed permanent soil erosion and sedimentation control measures and their estimated cost.
- f. A statement of the quantity of the excavation and fill involved.
- g. A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control facilities which remain after the project completion, including the designation of the person or organization responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion and sedimentation control measures are located.
- h. Other information or data as may be required by the city engineer, such as a soil investigation report which shall include, without limitation, data regarding nature, distribution, and supporting ability of existing soils and rock on site.

(d) The soil erosion and sedimentation plan shall be reviewed by the city engineer (or by a person trained and experienced in soil erosion and sedimentation control techniques, as designated by the city engineer).

(e) All earth changes shall be designed, constructed, implemented and maintained in accordance with the minimum requirements for earth changes as provided by Part 91, the rules, and this article, and shall also comply with any structural, vegetative, or managerial practices to effectively prevent or reduce soil erosion and sedimentation as determined necessary by the city engineer. In determining the adequacy and effectiveness of the design, implementation and maintenance of proposed soil erosion and sedimentation control measures for purposes of this article the city engineer shall consider:

- (1) Site specific factors and information of the type required to be included in the soil erosion and sedimentation control plan for the property; and

- (2) The specification and recommendations regarding soil erosion and sedimentation control measures and practices as provided by the “Guidebook of Best Management Practices for Michigan Watersheds,” (“BMP guidebook”) published by the Michigan Department of Environmental Quality (MDEQ). A complete copy of the BMP guidebook shall be kept available for public inspection at the building department at Walker City Hall.

(f) The city engineer shall approve, disapprove or require modification of the application for the earth change permit and accompanying plan within 30 calendar days following receipt of a complete application. Notification of approval may be done by first-class mail. Notification of disapproval shall be made by certified mail. If the application is disapproved, the city engineer shall advise the applicant of the reasons for disapproval and conditions required for approval. The requirement of notification by certified mail is not necessary if the application is personally given written approval or disapproval of the application.

(g) An earth change permit shall not be issued where:

- (1) The proposed work would cause uncontrolled soil erosion and sedimentation; or
- (2) The proposed work would cause hazards to the public safety and welfare; or
- (3) The work, as proposed by the applicant, will damage any public or private property or interfere with any existing drainage course in such a manner as to cause damage to any adjacent property or result in the deposition of debris or sediment on any public way or into any stream or create an unreasonable hazard to persons or property; or
- (4) The land area for which work is subject to geological hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability or any other such hazard to persons or property; or the land area for which the work is proposed lies within the 100-year floodplain of any stream or watercourse (not specifically designated and

delineated by the county as an area subject to flood hazard), unless a permit from the Michigan Department of Environmental Quality (MDEQ) accompanies the application and a hydrologic report prepared by a licensed and professional engineer is submitted to certify that the proposed work will have, in the city engineer's opinion, no detrimental influence on the public welfare for upon the total development of the watershed.

(h) No earth change permit shall be issued until the applicant has paid applicable permit and inspection fees to the city treasurer in accordance with the fee schedule adopted by resolution of the city commission and has posted the required deposit pursuant to Section 34-214. The city engineer shall calculate the fee after reviewing the application and plan.

(i) Upon a determination by the city engineer that an applicant has met all applicable requirements under this article and other applicable laws and regulations, and that the applicant has paid all applicable fees, the city engineer shall issue a permit for the proposed earth change. The permit shall be kept available on the site of the proposed earth change at all times for inspection by the city.

(j) If the earth change for which a permit has been issued has not been commenced within one year from the date of issuance of the permit, the permit shall lapse, provided that the city engineer may extend the time for commencement of the earth change if the permittee requires an extension prior to the expiration of the initial period and not material change of circumstances has occurred.

(k) An earth change permit issued under this article shall not relieve the permittee from complying with any other applicable statutes, ordinances, rules or regulations.

(l) The failure to comply with any term or condition of an approved permit or to timely complete all work as set forth in an approved plan constitutes a violation of this article.

(m) An "authorized public agency" as defined by Part 91 is exempt from obtaining an earth change permit but shall notify the city in advance of each proposed earth change.

Section 4. Amendment of Section 34-214.

Section 34-214 of Chapter 34 of the City Code is hereby amended to read in its entirety as follows:

Sec. 34-214. Deposit.

(a) No permit shall be issued by the city under this article or transferred under Section 34-212(b) unless the applicant first posts a deposit with the city treasurer in the form of cash, a certified check, or an irrevocable letter of credit, whichever the applicant selects, subject to the following:

- (1) The deposit shall be in a form approved and furnished by the city. The deposit shall be in the amount sufficient to assure the installation and completion of such protective or corrective measures as required by the city.
- (2) As a condition of the deposit, the applicant shall be required to comply with all provisions of this article, the terms and conditions of the permit, and complete all work set forth in the plan within the time specified in the permit (or, if no time limit is so specified, within 180 days after the date of issuance of the permit).

(b) If the applicant fails to complete the work as provided by subsection 34-214(a)(2), the city is authorized the cause the work to be completed in accordance with the plan covered by the permit and the necessary and reasonable costs and expenses so incurred or expended, including the incidental administrative and legal costs, shall be the obligation of and paid by the applicant. The applicant shall be refunded any portion of the deposit not used for the aforesaid costs and expenses.

(c) The city engineer is authorized to grant the permittee an extension of time to complete the work shown in the plan upon the applicant's written request showing good cause for the need of the extension prior to the expiration of the time required for completion of the plan.

Section 5. Amendment of Section 34-215.

Section 34-215 of Chapter 34 of the City Code is hereby amended to read in its entirety as follows:

Sec. 34-215. Inspections.

(a) The city engineer (or other person that has completed the MDEQ soil erosion and sedimentation control training, as designated by the city engineer) shall inspect all work covered by an earth change permit issued pursuant to this article and is hereby authorized to enter property in the city covered by a permit for the purpose of performing inspection duties under this article. Inspection fees shall be paid as provided according to the fee schedule adopted by resolution of the city commission.

(b) The city engineer, or any person designated by the city engineer, may enter at all reasonable times in or upon any private or public property for the purpose of inspection and investigating conditions or practices that may be a violation of this article. However, an investigation or inspection under this subsection shall comply with the United States constitution and the state constitution of 1963.

Section 6. Amendment of Section 34-216. Section 34-216 of Chapter 34 of the

City Code is hereby amended to read in its entirety as follows:

Sec. 34-216. Permit required prior to issuance of building permit.

A building permit shall not be issued for any property upon which an earth change permit is required until the earth change permit has been issued for the property as provided by this article.

Section 7. Amendment of Section 34-216.2.

Section 34-216.2 of Chapter 34 of the City Code is hereby amended to read in its entirety as follows:

Sec. 34-216.2 Earth change activities not requiring permit; violations.

(a) A residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth

change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

- (1) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.
- (2) Gardening, if the natural elevation of the area is not raised.
- (3) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.
- (4) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.
- (5) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:
 - (i) Planting of trees, shrubs, or other similar plants.
 - (ii) Seeding or reseeding of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.
 - (iii) Seeding or reseeding of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.
 - (iv) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state and complies with the city zoning ordinance (chapter 94 of the city code) and other applicable ordinances.
 - (v) Seawall maintenance that does not exceed 100 square feet.

(b) Exemptions provided in this section shall not be construed as exemptions from enforcement procedures under this article if the exempted activities cause or result in a violation of this article.

Section 8. Addition of Section 34-216.3.

Section 34-216.3 of Chapter 34 of the City Code is hereby added immediately following 34-216.2 to read in its entirety as follows:

Sec. 34-216.3. Reduction of soil erosion or sedimentation by owner.

(a) A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion and sedimentation from the land on which the earth change has been made.

(b) This section is effective whether or not an earth change permit is required by this article.

Section 9. Amendment of Section 34-210.

The heading of Section 34-210 of Chapter 34 of the City Code is amended to read “**Municipal enforcing agency**” in place of “**Local enforcing agency.**”

Section 10. Amendment of Section 34-219.

The heading of Section 34-219 of Chapter 34 of the City Code is amended to read “**Violations, civil fines and damages**” in place of “**Municipal civil infraction.**”

Section 11. 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 12. Savings Clause.

Any action to enforce any provision of Article VI of Chapter 34 of the City Code which is pending on the effective date of this Ordinance and which arose from a violation of a provision of the Code amended or repealed by this Ordinance, or any enforcement action which is started within one (1) year after the effective date of this Ordinance arising from a violation of a provision of Article VI of Chapter 34 of the City Code amended or repealed by this Ordinance and which was committed prior to the effective date of this Ordinance, shall be processed and determined exactly as if the applicable provision of Article VI of Chapter 34 had not been amended or repealed.

Section 13. Effective Date.

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

First Reading:

Second Reading:

Effective Date:

Robert J. Ver Heulen, Mayor

Sandra A. Wisniewski, City Clerk