

ORDINANCE NO. 29 - GIS Ordinance

An ordinance to provide for the recovery of costs associated with the provision of the Meade County's Geographic Information Systems Data to members of the public and setting forth the terms and conditions by which users of the Geographic Information Systems Data will be bound.

WHEREAS, the County of Meade has established a Geographic Information System (GIS) database which serves as the foundation for all mapping and geographic information systems application development performed by the County; and

WHEREAS, members of the public often request copies of maps or other compilations of GIS data which have been previously created for governmental purposes, as well as custom maps or other custom compilations of GIS data not previously created for governmental purposes, and the County recognizes that it may be responsible for providing such GIS data to the public under the terms of the South Dakota Public Open Records Act; and

WHEREAS, the County incurs certain costs for searching, producing and delivering GIS data to frequent users of the GIS data; and

WHEREAS, the County desires to implement measures to protect the GIS data from improper use or dissemination by members of the public, as well as to protect the County from liability for any errors or discrepancies that may be contained in the GIS data; and

WHEREAS, the County has determined that its interests are best served by the enactment of an ordinance providing for the issuance of a subscription or a copy of the GIS data in a form prescribed by the Equalization and Planning Department to access the County's GIS data, and which will further provide that members of the public must comply with certain restrictions on the use and dissemination of the GIS data as a condition of the issuance of the subscription or Written Permission;

BE IT ENACTED BY THE COUNTY COMMISSIONERS OF MEADE COUNTY:

SECTION 1. Geographical Information System

1. Geographical Information System Data.

(a) The Equalization and Planning Department shall designate, may develop, implement and maintain a geographic information system ("GIS") primarily for the use of the various agencies of Meade County and, if authorized by the Director of Equalization and Planning or a designee, for the limited use of other persons or entities. The GIS or the GIS data may be further defined in writing by the GIS Coordinator and shall be made up of digital data ("GIS data") electronically created, collected, formatted, manipulated or otherwise maintained by Meade County Equalization and Planning or a designee.

(b) Subscription, Written Permission Form or permitted access required.

(1) It shall be a Class 2 misdemeanor for any person or entity, to acquire, maintain, or use for any application the GIS data without first obtaining an internet subscription issued by the Director of Equalization and Planning or designee in a form prescribed by the same, a Written Permission Form approving a copy of any or all geodatabases under the conditions set forth in this ordinance and upon such form, or through access points designated by the Meade County Equalization and Planning Department.

(2) All GIS subscriptions issued pursuant to this section shall be executed by the person or entity requesting the full web based GIS site access. The subscription cost shall be \$50.00 annually per person or \$250.00 per legal entity and the amount shall be adjusted annually if necessary by the Director of Equalization and Planning. The individual that has obtained a subscription for the GIS web based information from Meade County shall not sublicense, assign, lease, post on the internet, transfer, sell, abuse or intend to abuse as to commit harm, allow the use of, permit access to, distribute, allow interactive rights to, or otherwise make the GIS data available to any other person or entity. The Meade County Governing Board of Commissioners may grant to other government entities, institutions, organizations or individual's access to the GIS based web site at no cost to the government entities, institutions, organizations or individual; to be determined by the Governing Board.

(3) Written requests to acquire a copy of the GIS data shall set forth the purposes for which the data requestor intends to use the GIS data. The Governing Board of Commissioners or their designee shall either approve or deny any written request for the proposed use of the GIS data. If such use is approved, a **"Written Permission Form"** shall be issued upon receiving a signed agreement from the requestor that it acknowledges and will comply with the following express conditions and understandings: The data requestor will not copy, reproduce, disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, allow the use of, permit access to, distribute, allow interactive rights to, or otherwise make the GIS data available to any other person or entity in any form whatsoever, except as specifically provided for in the Written Permission Form and authorized by the Governing Board of Commissioners or their designee;

(4) If written permission is granted, the data requestor will keep and maintain the GIS data in a secure manner, will keep a record of the location of the GIS data, and will return the GIS data to Meade County or destroy the GIS data and inform Meade County of the same upon the cessation of the use of the GIS data;

(5) The data requestor will have an ongoing and continual duty to notify any employees, agents, contractors or other individuals having access to the GIS data as a part of the requestors authorized use of the GIS data of the restrictions set forth in this section and in the Written Permission Form, and to ensure that the employees, agents, contractors or other individuals comply with the same;

(6) All subscription holders, data requestors and the public acknowledges and understand that the GIS data is not a legally recorded map, survey, or legal document and that the GIS data may contain errors; the GIS data is for reference only and the subscription holders, the public and data requestors will not use or rely upon the GIS data in any other way;

(7) All subscription holders, data requestors and the public acknowledge and understand that Meade County has provided the GIS data on an “as is” basis and makes no representations, guarantees or warranties regarding the GIS data whatsoever, including but not limited to representations, guarantees or warranties that the GIS data is fit for any purpose, or is accurate, complete or correct; and further that Meade County expressly disclaims any and all liability of any nature whatsoever arising out of any use of the GIS data by any person or entity;

(8) All subscription holders, data requestors and the public shall defend, release, indemnify and save and hold harmless Meade County and its officers, agents and employees from any and all claims, damages, demands, liabilities, losses, actions, suits, costs, expenses, legal fees, judgments, causes of action, or other legal, equitable or administrative proceedings of any kind whatsoever, of or by anyone whomsoever, regardless of the legal theory(ies) upon which premised, which in any way result from, are connected with, or arise out of, directly or indirectly, the actions or omissions of any person or entity in connection with any use of the GIS data obtained by any person or entity; from Meade County, whether such use is authorized or unauthorized, by any person or entity, including actions or omissions of any person or entity; officers, employees, agents, representatives, invitees, subscription holders, data requestors sub-consultants, or any other individual obtaining access to the GIS data provided by Meade County to the subscription holders, data requestors or the public;

(9) The subscription holders and data requestors shall, upon request from Meade County, use its best efforts to assist Meade County in identifying any unauthorized use of the GIS data by any person or entity that may have gained possession of the GIS data provided by the Meade County to the subscription holders or data requestors.

(10) The subscription holders or data requestors acknowledges and understands that any use it makes of the GIS data that is not in compliance with this section or provided for by a subscription or Written Permission will cause irreparable harm and significant injury to Meade County and that Meade County may seek and obtain injunctive relief against the subscription holders, data requestors, or any person or entity, for acting or threatening to engage in or facilitate the unauthorized use of the GIS data, in addition to any other equitable or legal remedies that may be available to Meade County.

(11) Fees for GIS data. The GIS data shall be available, if the distribution of the data is approved by the Governing Board of Commissioners, in ESRI Shape File format only and for each set of the data requested, preparation costs including a CD copy will be provided at a cost of \$250.00 each to the data requestor, set forth in this Ordinance by the Meade County Governing Board of Commissioners, as the same, including the subscription fees, may be made adjusted annually by the Director of Equalization and Planning if deemed necessary.

SECTION 2. Severability and Separability

Should any Section, Sub-section or Provision of these GIS Regulations be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the GIS Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

SECTION 3. Effective Date

GIS Ordinance No. 29 shall take effect and be in force from and after 20 days from the date of completed publication.

Adopted this ____ day of _____, 2007

Dated at Sturgis, South Dakota, this ____ day of _____, 200__

Chairman Bob Mallow _____
Meade County Commissioner

Attested: _____

Lisa Hunt-Schieffer, Meade County Auditor