

ORDINANCE NO. 059

AN ORDINANCE AMENDING SECOND REVISION
BROWN COUNTY ORDINANCES, EFFECTIVE MARCH 12, 1997
BY ADDING TITLE 19 – GIS DATA ACCESS AND DISTRIBUTION

BE IT ORDAINED by the Brown County Commission, Brown County, South Dakota, that Second Revision Brown County Ordinances, as amended be amended by adding Title 19 – Geographic Information System (GIS) Data Access and Distribution

Chapter 19.01 General Provisions and Definitions

19.0101 Purpose. This Ordinance is promulgated under specific statutory authority of Chapter 7-18A-3 of the South Dakota Codified Laws. It is the intent of this ordinance to monitor by regulation and policy, the sale and distribution of GIS data and information pursuant to the GIS Coordinator and Steering Committee. The policies and procedures under this ordinance are intended to be prospective in nature.

19.0102 Title. This portion of the Brown County Ordinances shall be now cited and referred to as Title 19 – Geographic Information System (GIS) Data Access and Distribution.

19.0103 Definitions. For the purpose of clarity in this title or in subsequent data Restrictive Release Statements, the following terms are defined:

Agency. A synonym for “public agency,” or “government agency.”

Data Custodian. A synonym for data Steward.

Data Owner. The entity that holds the valid copyright for the subject data.

Derivative Data or Products. All works created by the Licensee which incorporate all or part of the Steward’s data, including, but not limited to, a revision, modification, translation, abridgement, condensation, expansion, collection, compilation, or any other form of, or modification to, the Steward’s data.

dGI. digital Geographic Information, a synonym for geospatial data.

Geospatial Data. The digital, geographic and location-based information, including related attribute records, data files, and metadata that are stored and maintained in the Data Owner’s or the Steward’s computer systems.

Geodata. A synonym for geospatial data.

GIS. Geographic Information System, the collection of computers, software, databases, and data that enable geospatial data to be received, manipulated, displayed, and distributed.

Licensee. Any recipient of the Steward's data that has agreed in good faith to the terms of the License Agreement, and is conducting data related activities accordingly.

Metadata. Information that describes geospatial data, such as the contact person in the data owner's agency, the contents of the dGI database, the data accuracy, projection, currency (date of capture), and format of the data.

Steward. The public agency responsible for the distribution of information used or collected by a public agency or government that is deemed to be public record - in this case, <name of public agency>. The data Steward may also be responsible for the collection, maintenance or update of an Agency's data. The Steward may or may not also be the data owner.

Steward's Data. A synonym for geospatial data.

Chapter 19.02 Authority and Oversight

19.0201 GIS Department. The GIS Department shall designate, develop, implement and maintain a Geographic Information System (GIS). GIS data and media shall be defined in writing by the GIS Coordinator and shall consist of printed media and digital data that has been created, collected, formatted, manipulated or otherwise maintained by the Brown County GIS Department or a designee thereof. The GIS will primarily be used by the various agencies of Brown County. The GIS Coordinator or a designee thereof shall provide oversight for access to GIS data by internal Brown County departments, employees and elected officials.

19.0202 GIS Steering Committee. A GIS Steering Committee shall be developed to review applications and grant authorization for access and dissemination of GIS data by external persons or entities. The GIS Steering Committee shall consist of the following core persons or designees thereof:

- 1) Brown County GIS Coordinator, Committee Chairman
- 2) Brown County Equalization Director
- 3) Brown County Planning and Zoning Director
- 4) Brown County Data Processing (IT) Director
- 5) Brown County Commissioner

The GIS Steering Committee shall meet at least once each calendar quarter with special meetings to be called by the Committee Chairman as the need arises. Other individuals may be asked to participate in Steering Committee meetings but may not vote unless attending as a designee of one of the aforementioned core persons. For access to GIS data to be granted, a quorum of the GIS Steering Committee (at least 3 members) must approve a request in writing.

Chapter 19.03 Data Recipients

19.0301 Classes of Recipients. Brown County, as a GIS Data Steward, intends to make its geospatial data available to all interested parties who agree to the terms of

its Restrictive Release Agreement. The Steward reserves the right to differentiate the type of data and data services, as well as the price and the priority for service response, to be provided to each of the following classes of data recipients:

Value Providers. Includes data and cost sharing partners, emergency service providers, public agencies offering services or data in return for use of the Steward's data, or agencies whose mission is integral to the Steward's mission.

Data Redistributors. Private companies that 'value-ad' and re-sell the Steward's data and public agencies that redistribute the Steward's data. (See the "Data Redistribution" section).

Data User. All other recipients including other public agencies, private agencies and private companies that do not redistribute data, non-governmental and non-profit organizations, educational and research institutions, news media, students, and private citizens.

Chapter 19.04 Data Distribution Methods, Services and Fees

19.0401 General. The Steward intends to make its geospatial data available through one or more of the following methods pursuant to the Restrictive Release Agreement and depending on the availability and capability of the GIS staff, the availability and capability of licensed data re-distributors, and the availability and capability of such internet-based applications as it deems practical and affordable:

- 1) Copies of the GIS databases in the GIS format used by the Steward (or translated into a specified standard format), to be provided in such electronic output media as the Steward is capable of producing (for example, CD, tape or disk). [Steward-Owned]
- 2) Copies of the GIS databases in the GIS format used by the Steward (or translated into a specified standard format), to be provided as downloadable files through a File Transfer Portal (FTP) via the internet. [Steward-Owned]
- 3) Read and Write/Update access to authorized data partners, distributed via methods to be determined on a case-by-case basis. [Steward-Owned]
- 4) Special requests for information, analysis, or data products, which are subsets of the Steward's digital GIS databases (e.g., custom data services, including data extraction, translation, reformat, or reclassification of data).
- 5) Read-only access to the GIS databases (via the internet) through special application programs commissioned by the Steward. These programs will allow selective query and display of the data as well as printing of maps and data tables, but will not grant access to downloading or copying of the database.

- 19.0402 GIS Standard Data Products and Pricing List. In order to facilitate the exchange or translation of data among different GIS system formats, the Steward shall maintain a database, which shall include a current list of the Steward's GIS data, products and pricing including designations of ownership, privacy and security restrictions. The list shall be amended as necessary by the GIS Department and annually reviewed and approved by the GIS Steering Committee.

This document may be used for internal management of the Steward's data resources and to inform data requesters and data Licensees so that they may use the Steward's data effectively. The GIS Data Product List may include, but is not limited to, themes, layers and features of mapped elements and corresponding key-linking and descriptive attributes. The List should include the spheroid, datum, and map projection for each theme or layer. The List should also include tables that diagram the contents of data records, the linkages between record types, and the linkages between related databases that store information pertaining to the mapped features.

The GIS Data should but is not required to embed suitable descriptive information (metadata) into data files so as to enable other GIS systems to read and translate the data. Such capabilities shall be employed whenever practical. The data Steward shall utilize database standards in structuring and identifying its database contents whenever practical and feasible. Such standards include those published by the Federal Geographic Data Committee (FGDC) as well as others.

- 19.0403 Fees for GIS Data. The Brown County GIS Steering Committee may grant to other government entities, institutions, organizations or individual's access to GIS web-based data at no cost to the government entities, institutions, organizations or individual; to be determined by the GIS Steering Committee.

If distribution of specific GIS data is approved by the GIS Steering Committee, the GIS data shall be available in either paper format or in ESRI Shape File or Geodatabase digital format, whichever has been requested and approved.

Fees for specific GIS data sets, preparation costs including an hourly Customization Fee for custom data services including data extraction, translation, reformatting or reclassification of data and Standard Product Fees including digital or paper media among others shall be set and adjusted annually, as necessary, by the GIS Steering Committee. A database of individuals and organizations having access to GIS data sets and any fees collected in association with access to such will be administered by the Brown County GIS Department.

- 19.404 Subscriptions to Web-Based GIS Data. 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 fee shall be set and adjusted annually, as necessary, by the GIS Steering Committee. A database of individuals and organizations having access to the web-based data and any fees collected in association with access to such will be administered jointly by the Brown County Equalization and GIS Departments.

19.0501 Restrictive Release Agreement. Requests for GIS data must be accompanied by a Restrictive Release Agreement (See Appendix XX) to be completed by the person or entity (or designee thereof) requesting the data. Specific intentions for access to and dissemination of the data must be provided within each request. Members of the GIS Steering Committee or their designees 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 (See Appendix XX) shall be issued upon receiving a signed Restrictive Release Agreement from the requestor acknowledging the intention to comply with the express conditions and understandings outlined within the Agreement.

19.0502 Copyright and Copyright Notice. The public agency, Data Owner, or its Steward, asserts its right to regulate the distribution of its data through its claim of ownership as a copyright. All title, ownership, and intellectual property rights which may exist or be created with the geospatial data shall remain with the Owner.

The organizational structure of the GIS databases, the coding of the GIS databases, the format of the GIS databases and the graphic design of its maps are the property of data Owner, as registered and protected by U.S. copyright statutes and treaties.

All publications, including via the internet, using any of the Steward's data for release to the public or to others outside the Licensee's organization or using geographic information derived from the Steward's data and identifiable there from must include a copyright notice such as:

"Copyright, <dd/mm/yyyy>, <Brown County, SD>" or

"Derived from data that is Copyright, <dd/mm/yyyy>, <Brown County, SD>"

19.0503 Data Security and Oversight. 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 Brown County or destroy the GIS data and inform Brown County of the same upon the cessation of the use of the GIS data.

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.

19.0504 General Disclaimer. All subscription holders, data requestors and the public acknowledges and understand that GIS data is not a legally recorded map, survey, or legal document and that 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.

Further, all subscription holders, data requestors and the public acknowledge and understand that Brown County has provided the GIS data on an “as is” basis and makes no representations, guarantees or warranties whatsoever 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 Brown 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.

- 19.050 Data Corrections and Additions. Users of the Steward’s dGI that correct errors in the data, or that update the data with more current information, shall make these modifications available to the Steward. These data updates, additions, revisions, or corrections shall be provided in a format compatible with the format from which the data were received from the Steward.

Licenses of the Steward’s dGI that create or modify additional themes, layers, features or data elements based on, or in reference to the Steward’s data, shall make these additions available to the Steward, provided they are not the exclusive, proprietary interest of the Licensee. These data additions shall be provided in a format compatible with the Steward’s data format. The Licensee assesses these exchanges of data to be of equal value to both parties.

- 19.0506 Release of Indemnity. All subscription holders, data requestors and the public shall defend, release, indemnify and save and hold harmless Brown 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(s) 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 Brown 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 Brown County to the subscription holders, data requestors or the public;

- 19.0507 Penalty for Improper Acquisition or Misuse. 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 a subscription to the data or by completing and having approved by the GIS Steering Committee a Restrictive Release Agreement thereby granting access to the GIS data under the conditions set forth in this ordinance.

- 19.0508 Unauthorized Use. The subscription holders and data requestors shall, upon request from Brown County, use its best efforts to assist Brown 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 Brown County to the subscription holders or data requestors.

19.0509 Causes for Injunction. 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 Brown County and that Brown 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 Brown County.

Chapter 19.06 Data Redistribution and Third Party License

19.0601 Sublicensing. Any individual, organization or agency that has obtained a subscription to GIS web-based information from Brown 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 except as specifically provided for in the Written Permission Form and authorized by the GIS Steering Committee.

19.0602 General. Recipients of the Steward's data (Licensees) may not redistribute or re-sell the Steward's data to third parties unless they notify the Steward they intend to do so and agree to the relevant terms of the License Agreement, specifically, payment of a resale royalty fee, and the requiring of third party recipients to sign a similar License Agreement protecting the rights of the Steward. Licensees that sell or distribute the Steward's data to third parties shall obtain their agreement to the same licensing terms as are stated herein. Third parties shall sign a similar License Agreement with the Licensee. Third parties shall not be permitted to redistribute or resell the data unless they sign a License Agreement with the Steward.

19.0603 Derivative Data or Products. The Steward retains all rights pertaining to its data, particularly those regarding its redistribution or resale. So long as its data remains an identifiable and extractable subset of the Licensee's data or products, such data or products will be considered "derivative" of the Steward's data. (For example, re-printing the Steward's base maps in a more convenient size, and display format).

Any portion of the geodata or its derivative products that are modified or merged into another computer file by the Licensee, so as to form a separate entity the original contents of which are unidentifiable and extractable, shall be considered a separate product, free from the provisions of the License Agreement, so long as it is in no way associated with the Steward. (For example; a hazardous materials storage site suitability map comprised of data from many agencies that has been overlaid, merged, and reclassified).

Non-derivative products would incorporate the Steward's mapped features with mapped features and descriptive attributes from other sources in such a way that the original data themes or layers are indistinguishable.

19.0604 Value Added Services. Licensees are permitted to create application programs that query and analyze the Steward's data and produce specific products there from. These are considered to be value-added services, not subject to the Steward's rights regarding data redistribution. (For example; a printed map of boat ramp locations or an on-line guide to restaurants).

Chapter 19.07 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.

Chapter 19.08. Fees for GIS Data.

Products, Services and Fees set forth in this ordinance will be reviewed by the GIS Director and the GIS Steering Committee in an effort to remain comparable to fees offered in other or similar jurisdictions. The Brown County Board of Commissioners shall approve and set all fees by Resolution.

Notice of Hearing _____ April 22 & 29, 2009

Passed First Reading _____ May 5, 2009

Passed Second Reading _____ May 12, 2009

Adopted _____ May 12, 2009

Published _____ May 20, 2009

Effective Date _____ June 9, 2009

Tom Fischbach, Chairman
Brown County Commission

ATTEST: _____
Maxine Taylor, Brown County Auditor