

1 A BILL

2 **For an ordinance amending the Denver Revised Municipal Code to**
3 **provide for the recovery of costs associated with the provision of the**
4 **City's Geographic Information Systems Data to members of the public**
5 **and setting forth the terms and conditions by which users of the**
6 **Geographic Information Systems Data will be bound.**

7
8 **WHEREAS**, the City has established a Geographic Information System (GIS)
9 database which serves as the foundation for all mapping and geographic information systems
10 application development performed by the City; and

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

16 **WHEREAS**, the City desires to recover the incremental costs of providing the GIS data
17 to the public and a reasonable portion of the costs associated with building and maintaining
18 the GIS by charging fees to members of the public for the provision of the GIS data; and

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

22 **WHEREAS**, the City has determined that its interests are best served by the enactment
23 of an ordinance providing for the issuance of a license in a form prescribed by the Manager of
24 Public Works in conjunction with the sale of the City's GIS data, and which will further provide

1 that members of the public must comply with certain restrictions on the use and dissemination
2 of the GIS data as a condition of the issuance of the license;

3 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

4 **SECTION 1.** That the Denver Revised Municipal Code is hereby amended by the addition of
5 a new Section 49-2 enacted to read as follows:

6 **Sec. 49-2. Geographical Information System Data.**

7 (a) Sale of GIS data. The department of public works or such other agency as the
8 manager of public works shall designate may develop, implement and maintain a geographic
9 information system ("GIS") primarily for the use of the various agencies of the city and, if
10 authorized by the manager of public works or a designee, for the limited use of other persons
11 or entities. The GIS, as the same may be further defined in writing by the manager of public
12 works, shall be made up of digital data ("GIS data") electronically created, collected, formatted,
13 manipulated or otherwise maintained by the city.

14 (b) License required.

15 (1) It shall be unlawful for any person or entity, other than another governmental
16 entity, to acquire, maintain or use for any application GIS data without first
17 obtaining a license issued by the manager of public works or designee and in a
18 form prescribed by the same, under the conditions set forth in this section and
19 upon the payment of a fee as also provided for in this section.

20 (2) All GIS licenses issued pursuant to this section shall be executed by the person
21 or entity requesting the GIS data ("licensee") and shall set forth the purposes for
22 which the licensee intends to use the GIS data. The manager of public works or
23 a designee shall either approve or deny the licensee's proposed use of the

1 data, and if such use is approved, the license shall be issued upon the
2 agreement of the licensee that it acknowledges and will comply with the
3 following express conditions and understandings:

4 (3) The licensee will not copy, reproduce, disseminate, transmit, license,
5 sublicense, assign, lease, release, publish, post on the internet, transfer, sell,
6 allow the use of, permit access to, distribute, allow interactive rights to, or
7 otherwise make the GIS data available to any other person or entity in any form
8 whatsoever, except as specifically provided for in the license and authorized by
9 the manager of public works or designee;

10 (4) The licensee will keep and maintain the GIS data in a secure manner, will keep
11 a record of the location of the GIS data, and will return the GIS data to the City or
12 destroy the GIS data and inform the City of the same upon the cessation of the
13 use of the GIS data;

14 (5) The licensee will have an ongoing and continual duty to notify any employees,
15 agents, contractors or other individuals having access to the GIS data as a part
16 of the licensee's authorized use of the GIS data of the restrictions set forth in this
17 section and in the license, and to ensure that the employees, agents,
18 contractors or other individuals comply with the same;

19 (6) The licensee acknowledges and understands that the GIS data is not a legally
20 recorded map, survey, or legal document and that the GIS data may contain
21 errors; the GIS data is for reference only and the licensee will not use or rely
22 upon the GIS data in any other way;

23 (7) The licensee acknowledges and understands that the City has provided the GIS

1 data on an “as is” basis and makes no representations, guarantees or
2 warranties regarding the GIS data whatsoever, including but not limited to
3 representations, guarantees or warranties that the GIS data is fit for any
4 purpose or is accurate, complete or correct; and further that the City expressly
5 disclaims any and all liability of any nature whatsoever arising out of any use of
6 the GIS data by the licensee or by any other person or entity;

7 (8) The licensee shall defend, release, indemnify and save and hold harmless the
8 City and its officers, agents and employees from any and all claims, damages,
9 demands, liabilities, losses, actions, suits, costs, expenses, legal fees,
10 judgments, causes of action, or other legal, equitable or administrative
11 proceedings of any kind whatsoever, of or by anyone whomsoever, regardless
12 of the legal theory(ies) upon which premised, which in any way result from, are
13 connected with, or arise out of, directly or indirectly, the actions or omissions of
14 the licensee in connection with any use of the GIS data obtained by the licensee
15 from the City, whether such use is authorized or unauthorized, by the licensee or
16 any other person or entity, including actions or omissions of the licensee’s
17 officers, employees, agents, representatives, invitees, licensees,
18 subconsultants, or any other individual obtaining access to the GIS data
19 provided by the City to the licensee;

20 (9) The licensee will, upon request from the City, use its best efforts to assist the
21 City in identifying any unauthorized use of the GIS data by any person or entity
22 that may have gained possession of the GIS data provided by the City to the
23 licensee;

1 (10) The licensee acknowledges and understands that any use it makes of the GIS
2 data that is not in compliance with this section or provided for by the license will
3 cause irreparable harm and significant injury to the City and that the City may
4 seek and obtain injunctive relief against the licensee for acting or threatening to
5 engage in or facilitate the unauthorized use of the GIS data, in addition to any
6 other equitable or legal remedies that may be available to the City; and

7 (11) If any copying or reproduction of the GIS data is specifically provided for in the
8 license and authorized by the manager of public works or designee, the
9 licensee shall affix a copyright and limitation on use notice, in the form, manner
10 and location as is specified in the license, to all copies or reproductions of the
11 GIS data that the licensee generates.

12 (c) Fees for GIS data. The GIS data shall be available in such formats or products
13 and for such fees as are set forth in the GIS fee schedule, as the same may be made and
14 amended from time to time pursuant to the authority of the manager of public works to charge
15 a fee for the use of GIS data under this Section. The GIS fee schedule shall be posted or
16 available for review at the office of the manager of public works.