

TITLED

"AN ORDINANCE RECOGNIZING THE CONSTITUTIONAL RIGHT TO BE COMPENSATED  
FOR THE TAKING OF PRIVATE PROPERTY"

BE IT ORDAINED BY BUTTE COUNTY AS FOLLOWS:

ORDINANCE OF THE BUTTE COUNTY COMMISSION, State of South Dakota, (1) adopting an emergency Ordinance to protect the public peace, general welfare, health and safety of the citizens of Butte County from violations of the Constitutional rights of the citizens, (2) reaffirming the protections for private property as provided in the Fifth and Fourteenth Amendments of the U.S. Constitution and the Civil Rights Act, (3) reestablishing the definition of private property protected by the Constitution and the Civil Rights Act as defined in current federal case law and regulation, and requesting that the Legislature of the State of South Dakota enact similar legislation to codify within state law such statutes and regulations as enacted by this county Ordinance.

**THE COMMISSION FINDS:**

1. That the Fifth and Fourteenth Admendments to the United States Constitution provides that private property shall not be taken for a public use without payment of just compensation and without due process.
2. That the Supreme Court of the United States has also examined those constitutional protections and affirmed that such taking shall not occur. (See First Evangelical Lutheran Church of Glendale v. County of Los Angeles, 107 S. Ct. 2378 (1987) (Reaffirming the Constitutional right granting compensation to a private property owner for a governmental regulation that deprived that owner of the reasonable economic use of his property, even though the deprivation or taking was only temporary ) and Nollan v. California Coastal Commission 107 S. Ct. 3141 (1987) (Requiring that governmental land use decision or regulations be narrowly focused on the public benefit as compared to the necessity of taking private property).
3. That on March 18, 1988, Presidential Executive Order 12630 was enacted and requires all federal agencies to analyze the economic effects or takings implications of their proposed policies, decisions, rules and regulations on the private property, private property rights and investment backed expectations of individual citizens.
4. That pursuant to this Executive Order and Supreme Court cases, the Attorney General for the United States has promulgated guidelines that define private property and private property rights and establish a procedure for federal agencies and departments to utilize in analyzing the effects of their proposed rules, actions, and decisions on private property.
5. That the Commissioners of Butte County endorse the private property protections guaranteed by the U.S. Constitution and desire to ensure that those protections and rights are afforded to the citizens of Butte County.

**THE COMMISSION DECLARES:**

1. That the following definition of private property as taken from the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, dated June 30, 1988 (Guidelines adopted pursuant to Executive Order 12630) shall be adopted within Butte County.
  - a. Private property includes all property protected by the Fifth and Fourteenth Amendments to the United States Constitution, including but not limited to, real and personal property and tangible and intangible property.
  - b. Private property protections shall also include protection for "investment backed expectations."
2. That all private property and private property rights within Butte County as herein defined shall be fully protected under the Fifth and Fourteenth Amendments of the U.S. Constitution and under the Civil Rights Act.
3. That violations of this Ordinance by the state and federal agencies shall be deemed to be a violation of Butte County Ordinance #94-4. Liability under this Ordinance shall be placed upon the federal official or officials responsible for making and implementing any decision which fails to comply with this Ordinance.

4. That if any provision of this Ordinance or the application thereof is held invalid, such invalidity does not affect any other provision of this Ordinance which can be given effect without the invalid provision or application, and to those ends the provisions of this Ordinance are severable.

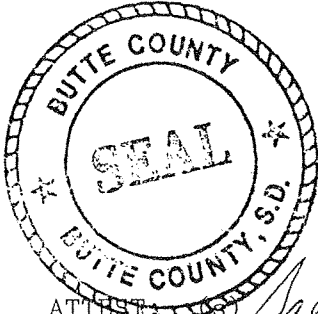
FIRST READING - APRIL 5, 1994

SECOND READING - MAY 3, 1994

THIS ORDINANCE WILL BECOME EFFECTIVE ON THE TWENTIETH DAY AFTER IT'S COMPLETED PUBLICATION.

THIS ORDINANCE WAS PASSED BY A MAJORITY VOTE OF THE BUTTE COUNTY COMMISSIONERS.

DATED AT BELLE FOURCHE, SOUTH DAKOTA, THIS 3RD DAY OF MAY, 1994.



BOARD OF BUTTE COUNTY COMMISSIONERS

(s) *William J. Hannah*  
WILLIAM J. HANNAH - CHAIRMAN

ATTEST (s) *Sally Pflaumer*

SALLY PFLAUMER - BUTTE COUNTY AUDITOR