

Orig

ROOSEVELT COUNTY**ORDINANCE #93-6****AN ORDINANCE PERTAINING TO UNCONSTITUTIONAL TAKINGS OF
PRIVATE PROPERTY**

ORDINANCE OF THE ROOSEVELT COUNTY COMMISSION, State of New Mexico, (I) adopting County Ordinance to protect the public peace, welfare, health and safety of the citizens of Roosevelt County from violations of the Constitutional rights of the citizens, and reaffirming the protection for private property as provided in the Fifth and Fourteenth Amendments to the U.S. Constitution and under the United States Civil Rights Act, (II) reestablishing the definition of private property protected by the Constitution and the United States Civil Rights Act as defined in current federal case law and regulations, (III) stating penalties to be imposed for violation of this County Ordinance; and, (IV) requesting that the Legislature of the State of New Mexico enact similar legislation to codify within State law such statutes and regulations as enacted by this County Ordinance.

RECITALS:

A. That the Fifth and Fourteenth Amendments to the United States Constitution provide that private property shall not be taken for a public use without payment of just compensation and without due process.

B. 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 vs. 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 vs. California Coastal Commission. 107 S. Ct. 3141 (1987) (Requiring that governmental land use decisions or regulations be narrowly focused on the public benefit as compared to the necessity of taking private property)).

C. 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.

D. That pursuant to this Executive Order and the previously cited United States Supreme Court cases as well as other United States 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.

E. That the Commissioners of Roosevelt 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 Roosevelt County.

I. DECLARATION:

BE IT DECREED BY THE ROOSEVELT COUNTY COMMISSION,

STATE OF NEW MEXICO:

A. That to provide for the general welfare, public peace, health and safety of the citizens of Roosevelt County, passage of this County Ordinance is required to protect the citizens of Roosevelt County from current or potential violations of their constitutionally protected property rights.

II. ADOPTION OF DEFINITION OF PRIVATE PROPERTY:

A. That the following definition of private property as taken from the United States Attorney General's Guidelines For The Evaluation Of Risk And Avoidance Of Unanticipated Takings, dated June 30, 1988 (Guidelines adopted pursuant to Presidential Executive Order 12630) shall be adopted within Roosevelt County and are incorporated herein as part of this County Ordinance:

1. 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.
2. Private property protection shall also include protection for "investment backed expectations."

B. That all private property and private property rights, within Roosevelt County, as herein defined shall be fully protected under the Fifth and Fourteenth Amendments of the U.S. Constitution and under the United States Civil Rights Act.

III. PENALTIES:

A. That violations of this County Ordinance by any State and/or Federal agency shall be deemed to be a violation of Roosevelt County Ordinance number _____. Liability under this Ordinance shall be placed upon the State or Federal official(s) responsible for making and implementing any decision which fails to comply with this Ordinance and /or on the agency itself.

B. That all violations of this County Ordinance shall be considered a criminal matter. Therefore, the punishment imposed upon determination of a guilty verdict shall be the maximum punishment allowed under the state law of New Mexico.

IV. PROMULGATION:

THE COMMISSION DIRECTS that a copy of this County Ordinance be forwarded to the Legislature of the State of New Mexico and respectfully requests that similar legislation be passed by the State.

V. SEVERABILITY:

That if any provision of this County 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.

PASSED, ADOPTED AND SIGNED by the Roosevelt County Board of County Commissioners as Roosevelt County Ordinance No. 93-6 and recorded with the Roosevelt County Clerk this 16th day of August, 1993.

BOARD OF ROOSEVELT COUNTY COMMISSION

By:

Bionnie Rea
Bionnie Rea, Chairman

ATTEST:

Maudene Haragan
Maudene Haragan,
ROOSEVELT COUNTY CLERK

ROOSEVELT CO. NM

BK. 8 PG. 297

1993 AUG 16 PM 3:03

MAUDENE HARAGAN-CLERK

BY Joyce Lee Traze

PNT 7-20-93

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TITLE AND GENERAL SUMMARY

ROOSEVELT COUNTY

ORDINANCE #93-6

AN ORDINANCE PERTAINING TO UNCONSTITUTIONAL TAKINGS OF PRIVATE PROPERTY

1. Recitals
2. Declaration
3. Adoption Of Definition Of Private Property
4. Penalties
5. Promulgation
6. Severability

This Ordinance shall be considered for adoption on Monday, August 16, 1993 at 9:30am, MDT, in the County Commission Meeting, County Commission Room, Roosevelt County Courthouse, Portales, New Mexico.

Copies of the Ordinance are available to interested persons during regular business hours of the County Clerk, Roosevelt County Courthouse.

7-14-93

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(13) Title summaries must appear in newspaper no later than Sunday - August 1, 1993.

Copies of each ordinance are also supplied in case

Re: Ord.
4-5-6
Look to PNT
for Publication
7-20-93