

# Memo

## Agenda Item #11

To: Mayor and Town Council

From: Sarah H. Abbott

Date: September 13, 2018

Re: “Amendment 74” – Just Compensation for Reduction in Fair Market Value by Government Law or Regulation

---

At the last Council meeting we had an informative discussion of Initiative #108, a proposed amendment to the Colorado Constitution, which seeks to amend the State constitution to include just compensation for any government law or regulation deemed to reduce the fair market value of private property. To summarize, we discussed that this proposed amendment contains expansive language that will significantly cost local governments, and more importantly our taxpayers, when any number of decisions are made like: zoning; land use; liquor, marijuana, and other forms of licensing; code enforcement; affordable housing initiatives; environmental protection, etc. Switching just compensation requirements from a taking which covers damages (as is currently structured in our constitution) to “fair market value” (whatever this means) could spawn countless and expensive lawsuits over a myriad of basic local land-use decisions such as zoning or the siting of municipal facilities. Since the last meeting, Initiative #108 has been certified for the November ballot as “Amendment 74.”

Agenda Item #11 is consideration of a Resolution Opposing “Amendment 74.” This draft Resolution was prepared by the Colorado Municipal League, which is vigorously opposing Amendment 74 for the reasons stated above and is encouraging its members to do so as well. The proposed Resolution explains the reasons for opposing Amendment 74 in its recitals.

If the Town Council decides to adopt the proposed Resolution, it would communicate the Town’s opposition to Amendment 74 and encourage its constituents to vote against Amendment 74 at the November election.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN  
VILLAGE OPPOSING “AMENDMENT 74”, AN ATTEMPT TO AMEND THE  
COLORADO CONSTITUTION TO DRASTICALLY LIMIT STATE AND LOCAL  
GOVERNMENT SERVICES AT A HIGH COST TO TAXPAYERS**

**RESOLUTION NUMBER \_\_\_\_**

**WHEREAS**, local government services are essential to the citizens of the Town of Mountain Village; and

**WHEREAS**, Amendment 74 has been written by certain out-of-state corporate interests to change the text of the Colorado Constitution, Article II, Section 15, which dates back to 1876 and threatens basic governmental services; and

**WHEREAS**, Amendment 74 declares that any state or local government law or regulation that “reduces” the “fair market value” of a private parcel is subject to “just compensation;” and

**WHEREAS**, while Amendment 74 is shrouded in simple language, it has far reaching and unintended impacts; and

**WHEREAS**, under the current Colorado Constitution, a property owner already has the right to seek compensation from state or local governments; and

**WHEREAS**, Amendment 74 would expand this well-established concept by requiring the government – i.e., the taxpayers – to compensate private property owners for virtually any decrease whatsoever in the fair market value of their property traceable to any government law or regulation; and

**WHEREAS**, Amendment 74 would create uncertainty because it is not clear what the language actually means or how it can be applied; and

**WHEREAS**, Amendment 74 would severely limit the ability of Colorado’s state and local governments to do anything that might indirectly, unintentionally, or minimally affect the fair market value of any private property; and

**WHEREAS**, Amendment 74 would drastically diminish the ability of our state and local governments to adopt – let alone attempt to enforce – reasonable regulations, limitations, and restrictions upon private property; and

**WHEREAS**, Amendment 74 would place laws, ordinances, and regulations designed to protect public health and safety, the environment, our natural resources, public infrastructure, and other public resources in jeopardy; and

**WHEREAS**, Amendment 74 would directly impact zoning, density limitations, and planned development; and

**WHEREAS**, Amendment 74 would make inherently dangerous or environmentally damaging activities prohibitively costly to attempt to limit or regulate, even in the interest of public health, safety, and welfare; and

**WHEREAS**, any arguable impact upon fair market value – however reasonable or justified or minimal or incidental or temporary – resulting from state or local government action could trigger a claim for the taxpayers to pay; and

**WHEREAS**, governments would be vulnerable to lawsuits for almost every decision to regulate or not to regulate, making regular government function prohibitively expensive for the taxpayer; and

**WHEREAS**, similar efforts have been attempted and defeated in other states, such as the states of Washington and Oregon; and

**WHEREAS**, the fiscal impact for similar language in Washington was estimated at \$2 billion dollars for state agencies and \$1.5 billion for local governments over the first six years; and

**WHEREAS**, individuals filed several thousand claims against state and local governments with an estimated value in excess of several billions of dollars in claims in Oregon before the residents repealed the takings initiative three years after its passage.

**NOW, THEREFORE, BE IT RESOLVED THAT THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE HEREBY** opposes Amendment 74 and strongly urges a vote of NO this November.

**ADOPTED AND APPROVED** by the Town Council of the Town of Mountain Village, Colorado, at a regular meeting held on the 20th day of September, 2018.

TOWN OF MOUNTAIN VILLAGE, COLORADO, a  
home rule municipality

By: \_\_\_\_\_

Laila Benitez, Mayor

ATTEST:

By: \_\_\_\_\_

Jackie Kennefick, Town Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

J. David Reed, Town Attorney