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1144 Sherman Street, Denver, CO 80203 • (p) 303-831-6411 / 866-578-0936 • (f) 303-860-8175 • www.cml.org

To: Interested Municipal Officials
From: Sam Mamet, Executive Director
Date: September 2018
Subject: Amendment 74 Introductory Memo

What follows is a brief summary of a significant statewide ballot measure on the November ballot, Amendment 74, "Just Compensation for Reduction in Fair Market Value by Government Law or Regulation." Amendment 74 could have dramatic impacts on state and local governments. Your careful analysis of this measure is strongly encouraged, as well as communication with county commissioners, neighboring municipal leaders, business interests like your chamber, neighborhood groups, and the community at large. This packet contains several important documents and we urge careful review. Please go to www.cml.org for more information or contact me directly at smamet@cml.org. **We need your help to defeat Amendment 74.**

PROPOSED AMENDMENT 74

Amendment 74, drafted by out-of-state corporate interests seeks to amend Section 15 of Article II of the Colorado Constitution to require just compensation if private property has "reduced fair market value by government law or regulation". Shrouded in simple language, Amendment 74 will have far reaching and potentially disastrous consequences.

Key Highlights (Not Comprehensive)

- Under the current Colorado Constitution, a property owner already has the right to seek compensation from state or local governments. Amendment 74 expands 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 due to any government law or regulation.
- Just about any municipal action could result in a lawsuit. Any inaction could as well, if the effect is even the slightest drop in an individual property's "fair market value."
- The obligation to compensate is triggered without regard to how long someone has owned the property or what the intentions or actions of the property owner are.
- There are no exceptions for health, safety, and general welfare regulations or those actions mandated by the federal or state governments.
- Once passed, there is no flexibility granted to the General Assembly to implement this measure; only the Colorado Supreme Court will be left to interpret the Amendment, including what "fair market value" and "reduced" means. This litigation will come at a high cost to state and local governments, paid for by taxpayers. Decisions on key matters will come to a halt while awaiting further clarification from the courts.
- The bottom line: Amendment 74 will require large pay outs from state and local governments, which means higher taxes for citizens and a reduction in essential government services such as parks, police, utilities, etc. We don't yet know how far reaching this Amendment will be, only that has potential to be disastrous for our state and local governments.

Municipal Impacts

- This measure will cripple local budgets through both increased legal costs and pay outs to individual property owners. Any decision by a government body would be vulnerable to lawsuits, with the cost borne by taxpayers.
- Municipal services under threat of being reduced include:
 - Parks, recreation centers, and neighborhood pools;
 - Police officers and police services;
 - Trash collection;
 - Maintenance of gas and water main lines;
 - Maintenance of streets and sidewalks;
 - Licensure of businesses; and

- Maintenance of land use codes to protect the structure and character of neighborhoods.
- The State of Oregon briefly enacted a similar statute, and in a few short years the measure led to thousands of individual claims, totaling in excess of several billion dollars. Three years after the statute passed, Oregon voters realized the extent of the statute on the economic vitality of the state and effectively repealed the statute. Our communities—and our state—simply cannot afford the impacts of this measure.

Examples of Potential Municipal Impacts

- *Infrastructure Improvements.* Colorado's population is expected to nearly double by 2050. State and local governments will have to expand public roads to accommodate new residents. Under Amendment 74, governments could be sued by nearby property owners affected by any infrastructure improvements due to loss in the fair market value of their homes caused by construction, busier streets, noise, and general changes to the character of neighborhoods. This Amendment will make it extremely difficult for state and local governments to improve or replace all kinds of public improvements such as storm water, electric utilities, sewage, rights of ways, easements, and transportation infrastructure because of potential liability.
- *Regulation of Airbnb.* Airbnb is a way for homeowners to make income on their private property by renting their properties for a per night fee. However, utilizing Airbnb has caused neighboring homeowners to raise concerns about crime and safety; noise levels, especially when the short term rentals are used for large parties; and a general loss of community in their neighborhoods. Under Amendment 74, any action a city council or town board decides to take under this scenario could leave them vulnerable to lawsuits from individual property owners: either lawsuits over the loss in rental income if a municipality forbids short term rentals in a certain area or lawsuits over the loss in fair market value to individual property because of a decrease in the character, safety, and sound quality of a neighborhood.
- *Broadband.* Voters in over 100 counties and municipalities across Colorado have told their local leaders to explore public private partnerships for better broadband access. State law has allowed this process since 2005. An incumbent provider could sue the local government for reducing the business investment previously made, even though the service has been inferior, causing such a vote to occur in the first place. The efforts to improve rural broadband access may be threatened.
- *Adult Entertainment Establishments.* Municipalities use zoning to form the character of neighborhoods and ensure a well-balanced community. As part of this, many municipalities limit the location of adult entertainment establishments. If a municipality regulates where an adult entertainment establishment can be, an owner could sue for loss in fair market value as one particular location may attract more business than another. If the municipality moves to allow adult entertainment establishments to conduct business anywhere, then property owners adjacent to these establishments may sue for loss in fair market value of their property if, for example, the crime rate rises.
- *Economic Development.* Incentives to attract new industry or retain existing businesses are done as a matter of course in many jurisdictions across the state. It is a contributing factor to Colorado's strong economy. If Amendment 74 passes, this practice may be stifled by an individual who sues a local government that is providing incentives, claiming their property's fair market value is reduced. Local governments will have to weigh the benefit of bringing in businesses with the detriment of paying for individual lawsuits. Statewide economic development groups are rightly concerned about this aspect of the proposal. Urban renewal and redevelopment projects may similarly be impacted by the negative effects of Amendment 74.
- *Affordable Housing.* Municipal leaders continue to struggle with how to best address the affordable housing challenges many of our communities face. One way communities address the problem is through a rezoning to allow for affordable housing. However, under Amendment 74, an individual may sue because the policy reduces the fair market value of their neighboring property. Suddenly, a project that has wide support in a community has been thwarted, at the expense of all the taxpayers in that city or town.
- *Land Use.* The decision making around land use and zoning is complicated enough. An already complex process to approve a new development will now take even longer and will be more costly because municipal decision makers will have to ensure their decisions cause the least amount of liability. Every action may have a new consequence and inaction may result in legal exposure under Amendment 74.

Government actions affect every area of a citizen's daily life from collecting trash, to employing police officers, to keeping communities safe. Requiring governments to pay for any reduction in fair market value will **cripple** state and local governments in Colorado, with the burden paid by taxpayers who must also contend with a reduction of government services.

Vote "NO" on Amendment 74. Protect our neighborhoods. Urge your friends and associates to do the same.

Talking Points for Local Elected Officials on Amendment 74

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

Amendment 74 seeks to amend Section 15 of Article II of the Colorado Constitution to require just compensation if private property has “reduced fair market value by government law or regulation”. As this Amendment will have negative impacts on local governments if passed, CML encourages local elected officials to speak to their communities. Below are some suggested talking points.

- The ability of elected officials to act on behalf of the collective health, safety, and welfare of their community is a core function of government. Amendment 74 undermines the ability of state and local governments to effectively represent their constituents and protect their interests in vital areas such as clean water and air, zoning enforcement, and infrastructure improvements.
- Under the current Colorado Constitution, a property owner already has the right to seek compensation from state or local governments. Amendment 74 expands this well-established concept by requiring the government – i.e., the taxpayers – to pay private property owners for virtually any decrease in the “fair market value” of their property due to a government law or regulation.
- No one truly knows how this proposed expansion of Section 15 could impact Colorado or local governments... But adding this language to the Constitution will add new layers of ambiguity to the Constitution and leave local governments and taxpayers with unprecedented levels of legal exposure.
- This ambiguity will result in taxpayer dollars going towards lawsuits, which either means a rise in taxes or a reduction in government services for neighborhoods, including parks, police, and utilities.
- Any change in law or regulation, even those broadly desired by a community or those in the interest of health, safety, and welfare, could be challenged by private land owners. Governments will be reluctant to address important policy issues.
- Amendment 74 will undoubtedly lead to increased legal exposure and costly litigation that will increase costs for government programs and services. These will be paid for at the taxpayers' expense.
- Municipalities will become collateral damage in private property disputes between owners who feel their property rights have been diminished at the behest of another. Any action by a local government could require that these property owners be compensated.
- In sum, Amendment 74 has unintended consequences which will cost Colorado communities too much money, while at the same time putting Colorado citizens in danger. It is a very risky proposition for our communities, our families, and our Colorado.
- [Cite a positive project in your city or town which could be impacted under Amendment 74.]