



MEMORANDUM

P.O. Box 4100 † FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: KATIE KENT, COMMUNITY DEVELOPMENT DIRECTOR
RE: WORK SESSION: HOUSING RESTRICTIVE COVENANT DISCUSSION. PART II
DATE: SEPTEMBER 16, 2024

Summary:

The purpose of the September 16, 2024 work session is for Staff to provide explanations regarding the following topics found within Housing Restrictive Covenants ("Covenant"):

- Eligible Household Incomes
- Qualifying Capital Improvements ("QCI")
- Asset Limit Testing

This understanding will allow the Council to continue to direct Staff if, and in what direction, they want these topics potentially modified in future Covenants. As a reminder, there are approximately 155 properties within the Town that have restrictive covenants on them through various development measures primarily stemming from development agreements or bonus density commitments. Approximately forty (40) of these units are employee units with no resale price cap (often referred to as "light" or "live/work" restrictions). The remaining have some type of limitation on household income and/or resale calculation, typically tied to an Area Median Income (AMI) between 80-120% Area Median Income. Some units have a higher AMI, up to 160% AMI.

A Housing Restrictive Covenant, also referred to as a "deed restriction, "HRC", or "covenant", is a common tool for placing limitations on the uses of a housing unit and are frequently utilized when a housing unit has been partially (or fully) funded by taxpayer money. The Covenant is a written agreement that restricts or limits the activities that may take place on a property or development. These agreements are recorded in the real property records of the County and are binding upon each owner and any future owner when the property is sold. When purchasing a property that has a covenant recorded on it, new property owners acknowledge a written statement affirming that they understand the restriction recorded on the property and that they will abide by it.

In 2019, through Resolution 19-27, the Town Council adopted a new Residential Housing Restrictive Covenant and Notice of Lien document (Attachment A) which was to provide a resale calculation that allows owners to potentially sell their property for a value which is an increased value over the previous method. Any homeowner is permitted to opt into the 2019 covenant if they choose to.

Questions posed to Council on September 16th will include:

- 1) Would Council like to include an income buffer which would allow prospective buyers to have a higher household income than what is currently allowed?
- 2) The 2019 Covenant does not have a maximum cap on the amount of QCI's an owner may add to their sale price. Would Council like this changed?
- 3) The Town currently does not limit assets that a buyer has when qualifying to be a purchaser. If the Council wants to consider having asset limits in the standard covenant, Staff requests Council clarify the amount, along with exceptions, that they would recommend.
- 4) After reviewing the additional information on maximum resale calculations from the August 27th meeting, does Council have additional questions, data or analysis needs, or direction for staff?

Additionally, Staff will provide information that the Council requested at the August 27th work session regarding additional examples of other jurisdiction's resale calculation formulas. Town Council members should be prepared to continue to request further information from Staff that will assist in their review and consideration of this topic.

As a refresher, Part I of this discussion took place during a work session and new business item at the August 27th Town Council meeting. Staff reports and recordings from that meeting can be reviewed here: [August 27, 2024 Town Council Meeting](#). The purpose of the work session held on August 27th was to review Housing Restrictive Covenants ("Covenant") including what they are and why they exist. Additionally, Staff explained the resale calculation formulas commonly utilized within the Town and compared them with other resale calculation formulas used in other jurisdictions. An analysis of the effect that the different options for resale calculations would have on properties was provided.

At the New Business item on August 27th, comments were received from eighteen members of the public. The Town Clerk has created a transcript of comments made from the recording of the meeting, and letters submitted will also be kept in the record of the meeting for review in future deliberations on this topic.

The overall topic of modifying the 2019 standard Covenant was first brought to the Town's attention in early 2023. A work session was held in August 2023 and Council directed staff at that time to research resale calculations and return at a later date to Council to discuss this research. An additional change happened in 2024 whereby the Summit Combined Housing Authority Area Median Income (AMI) spreadsheet changed (Attachment B). Some homeowners have expressed concern that this change has negatively affected their home resale calculations due to the current Covenant. These same owners have also noted concern over the future diversity of sale prices in covenant restricted property because of the way that appreciation is calculated in the 2019 Housing Restrictive Covenant.

The Covenant discussion will continue at an additional work session at which time staff will explain and seek direction from the Council on a variety of additional topics listed within a covenant including:

- a. Duration of Time to opt into new covenant and should 2019 covenant be extinguished

- b. Definition of Resident (for the purpose of qualifying to purchase deed restricted housing)
- c. Initial Purchase Price
- d. Buyer Selection
- e. Priority Period for Defined Employment Location

After the three informational work sessions, a fourth work session will be held for Council to have a summary discussion on the Covenant, along with a New Business item on a Council agenda to provide the community the opportunity to provide feedback. At that time Staff will have clear direction from Council should they want to bring forward a modification to the standard covenant used within the Town. This modified standard covenant would be brought before Council with a Resolution at a December or January meeting.

Analysis

Eligible Household Income

Staff is requesting direction from Council if they would like to include an income buffer which would allow prospective buyers to have a higher household income than what is currently allowed.

Some covenants throughout the County have an eligible household income that is between ten (10) to thirty (30) percent higher of an Area Median Income (“AMI”) than the designated AMI for a particular property. This allows a household qualifying to purchase a unit to make a higher income than the restricted property’s stated AMI. This income buffer allows households that have expenses such as childcare, student loans, auto loans, etc. afford monthly mortgage payments. If the Town moved forward with this income increase, it would apply to all prospective buyers interested in a unit for sale that has this within the restrictions. This change would increase the buyer pool as more households would qualify for unit. This can be viewed as a positive or negative based on an individual perspective:

- If the buyer pool is larger, the seller would have more of an assurance that someone could purchase the house at the price they are listing it at.
- If a household is allowed a higher income to purchase a unit, it potentially allows those with additional financial burdens such as student loans, childcare payments, etc. to be able to purchase the unit.
- Those households whose income limits fall under the original income cap established for the property when the original covenant was recorded may not appreciate that others are allowed to qualify to purchase the unit with a higher income.

An example of how an increased eligible household would apply is:

- Covenant states a 100% AMI unit
- 2024 Summit County AMI states that a 3-person household shall make no more than \$109,700
- If there is a twenty percent (20%) buffer for eligible household, then a 3-person household could make up to \$131,640 and still be eligible to purchase the 100% AMI unit.

Table 2: Income Buffer Examples

TOWN	DEVELOPMENT	INCOME BUFFER
Breckenridge	Blue 52	30%
Dillon	Sail Lofts	20%
Silverthorne	Smith Ranch	10-20%

Summit County	Dillon Valley Vistas and West Hills	20%
Frisco	2019 Covenant	20% IF property does not go under contract within first 30 days
Frisco	South End Village	In 2010, the Town Council allowed property owners to have a 10% increase if the property has been on the market for more than 90 days
Frisco	Other Covenants not live/work units	No income buffer

Qualified Capital Improvements

Staff is requesting Council provide direction if they would like a change made to the Qualified Capital Improvements (“QCI”) from the 2019 Covenant which allows capital improvements and does not have a maximum cap on the amount of QCIs an owner may add to their sale price.

Some original covenants allow Qualified Capital Improvements (“QCI”); previously referred to as Permitted Capital Improvements, in a limited manner. These are permitted within some Peak One Neighborhood properties and some South End Village properties. No other covenants within the Town were originally written with allowances for capital improvements. Please reference Attachment C for Peak One Neighborhood Affordability Categories and Permitted Capital Improvements.

QCIs are permitted in the 2019 Covenant. These range from a variety of items and depreciate on a five or twenty year schedule. If a property owner asks for QCIs that are for work that required a building permit, and a building permit was not submitted for and/or issued, the owner does not get to use that QCI. Property owners are given the option to retroactively apply for the permit and show code compliance which would then allow the QCI to be accommodated for.

Table 3: Capital Improvement and Maintenance Replacement Examples

TOWN	QCIs
Breckenridge	Newer developments allow 3-5% of purchase price to be added for approved maintenance items
Summit County	Allowed in a total amount not to exceed 10% of the Initial Purchase Price over every ten years
Frisco 2019 Covenant	Allowed on a 5 or 20 year schedule. No maximum cap for amount allowed to calculate unless hit maximum sale price on SCHA Summit County AMI spreadsheet
Peak One Original Covenants	Refer to Attachment C
South End Village	Selected Units are permitted PCIs at 10% of the original sale price of the unit

Staff requests feedback from the Town Council if they want to continue not having a maximum cap on the amount of QCIs an owner may add to their sale price.

Asset Limit

Staff requests Council clarify the amount, along with exceptions, that they would recommend if they want to consider having asset limits in the standard covenant. The Town currently does not limit assets that a buyer has when qualifying to be a purchaser. If the Council wants to consider having asset limits in the standard covenant, Staff requests Council clarify the amount, along with exceptions, that they would recommend.

Assets are the sum of all real and personal property, money, and other things of value owned or controlled by a person at the time of their purchase or lease of a property. Breckenridge and Summit County have begun having asset limits for some of their restricted units. An assumption of why asset limits are reviewed is that it addresses concerns raised by prospective buyers who have stated that it is unfair that some owners of restricted units have enough money to purchase a market rate unit and therefore should be limited from qualifying for a deed restricted unit. The Town of Frisco currently does not limit assets that a buyer has when qualifying to be a purchaser. This is a topic that has been being included in newer covenants throughout the County.

Town Staff is bringing this topic for Council to be aware of since other jurisdictions occasionally perform asset limit testing. If the Council wants to consider having asset limits in the standard covenant, Staff requests Council clarify the amount, along with exceptions, that they would recommend.

Table 4: Asset Limit Examples

TOWN	Development Name	Asset Limit
Breckenridge	Blue 52	\$225,000, not including primary residence equity, retirement accounts, health savings, and college savings accounts
Dillon	Sail Lofts	None
Silverthorne	Smith Ranch	None
Summit County	Dillon Valley Vistas	At time of purchase, buyer's assets must be less than \$200,000 in combined real and personal property
Frisco	All Covenants	None

Staff recommends Council provide feedback if they want Staff to draft language to propose within the covenant that would limit assets of buyers.

Maximum Resale Calculations

As requested by Town Council at the August 27th meeting, Staff researched additional methods of resale calculations performed throughout local jurisdictions. Similar to Frisco, Breckenridge has received inquiries from owners of homes in certain deed restricted neighborhoods in regards to their appreciation formula; specifically concerning the use of AMI as an index for calculating maximum resale prices. Inserted as Attachment D is a brief summary of the evolution of covenants in Breckenridge and more methods of resale calculations performed throughout local jurisdictions. After reviewing the additional information on maximum resale calculations from the August 27th meeting, does Council have additional questions or direction for staff?

Summary:

As a result of the September 16th work session, Staff expects Council to have a full understanding of:

- Eligible Household Income
- Qualifying Capital Improvements (QCI)
- Asset Limit

This understanding will allow the Council to continue to direct Staff if, and in what direction, they want these topics modified in future Covenants.

Questions posed to Council include:

- 1) Would Council like to include an income buffer which would allow prospective buyers to have a higher household income than what is currently allowed?
- 2) The 2019 Covenant does not have a maximum cap on the amount of QCIs an owner may add to their sale price. Would Council like this changed?
- 3) The Town currently does not limit assets that a buyer has when qualifying to be a purchaser. If the Council wants to consider having asset limits in the standard covenant, Staff requests Council clarify the amount, along with exceptions, that they would recommend.
- 4) After reviewing the additional information on maximum resale calculations from the August 27th meeting, does Council have additional questions for staff or, direction for staff?

Financial Impact:

Proposed changes to the covenants may or may not have a financial impact on workforce housing. Staff recommends Council continue to preserve the public investment in covenant restricted workforce housing to ensure that it remains reasonably available to the workforce of the future.

Alignment with Strategic Plan: The 2023 Strategic Plan, includes the strategic objectives of “We support a Thriving Economy”, “We enhance Community Inclusivity”. Within this priority, it is stated to:

- *Increasing workforce housing to appropriate levels*
- *Offering a variety of housing types to support year-round residents*
- *Considering equity, inclusivity, sustainability, and accessibility in all that we do*
- *Actively supporting the acquisition and retention of a diverse workforce*

The discussion on Housing Restrictive Covenants is consistent with the Strategic Plan and the Town Council’s priorities.

Staff Statement:

We, as staff, realize and acknowledge that the results of these conversations and how these topics are represented matter towards how for-sale affordable housing will operate in our Town and operate for owners. We have expertise and experience appropriate to provide the Council information about these topics and lead them through their analysis and decision making. The public and those living under covenant restricted property will also have important input to this process.

Staff will answer the Council's questions with factual information or based on factual information. If we are asked to give recommendations, we will do so. Ultimately, it's this collective work that may bring forward a new standard Housing Restrictive Covenant for consideration by the Council and the citizens of Frisco.

Our work in the affordable housing arena, with the SCHA, our direction from the Town Council and our strategic plan leads us to opinions and conclusions about these topics. We are attempting with our best efforts not to bias the Council's thought processes on these topics and provide factual information for the Council to consider. The Council's conclusions on these topics will be the policy of Frisco.

Reviews and Approvals: This report has been reviewed and approved by:

Diane McBride, Assistant Town Manager
Tom Fisher, Town Manager
Leslie Edwards, Finance Director

Attachments:

Attachment A - 2019 Restrictive Covenant
Attachment B – 2024 Summit County Area Median Income (AMI)
Attachment C – Peak One Neighborhood PCI Categories
Attachment D – Maximum Resale Calculation Examples