



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 IV
DATE: JANUARY 14, 2025

Summary:

The work session on January 14, 2025, is the fourth work session with Council on Housing Restrictive Covenants. The first work session was held on August 27, 2024, the second work session on September 16, 2024, and a third work session on December 10, 2024. These work sessions may result in a new Covenant, and if so, that Covenant will be before Council for review and approval in the first quarter of 2025.

The purpose of the January 14, 2025, work session is for the Council to review a draft Covenant that reflects the changes discussed during the three work sessions held so far. Staff is seeking feedback from the Council if they find the changes as presented are reflected accurately in the direction that Council has provided. Additionally, Staff requests Council provide feedback on if they would like to have further discussion on any topics already discussed, or that have not been addressed.

In addition to reviewing the draft covenant, staff is requesting further direction from Council on the following topics specifically:

- Lottery. Does the Council agree with the suggested priorities for extra tickets in the lottery?
- Proposed Resale Calculation with Capital Improvements. Does the Council want to allow a sum of purchase price plus 3% a year plus unlimited capital improvements?
- Owner and Renter employment requirements. Does the Council want a potential new covenant to read that no employment location is required after the purchase of a deed-restricted property? If so, additional questions are tied to this at the end of this memo in the "Summary" section.

Topics already covered in the first three work sessions include:

- A review of Housing Restrictive Covenants including what they are and why they exist.
- Resale calculation formulas commonly utilized within the Town and compared with other jurisdictions.
- Eligible household incomes. This topic is not as relevant by going through the lottery process.

- Qualifying Capital Improvements (QCI). The 2019 Covenant does not have a maximum cap on the amount of QCI's an owner may add to their sale price. Council had split opinions on unlimited QCI's. QCI's will be addressed further during the January 14th work session, and proposed changes are included in Exhibit B of the edited 2019 Covenant document (Attachment A).
- Asset limit testing. The Town currently does not limit assets that a buyer has when qualifying to be a purchaser. This verbiage is edited on pages 2 and 6 of the edited 2019 Covenant document (Attachment A).
- Buyer Selection. Lottery verbiage is included as further discussion during the January 14th work session.
- Initial Purchase Price. This verbiage is edited on page 7 of the edited 2019 Covenant document (Attachment A).
- Priority Period for Defined Employment Location. This topic is no longer relevant if Council supports a lottery system.
- Duration of Time to opt into new covenant and should 2019 covenant be extinguished. No changes needed as this will be an administrative function.
- Definition of Resident (for the purpose of qualifying to purchase deed restricted housing). This definition was modified in the edited 2019 Covenant document (Attachment A).
- Resale Calculations. Will be reviewed during the January 14th work session. Changed QCI's in Exhibit B of the edited 2019 Covenant document (Attachment A) from 5 year to 10 year.
- QCI Chart. See above.
- Ownership Elsewhere. Historically, covenants within Frisco have not allowed ownership of other residential property. This section was deleted on page 10 of the edited 2019 Covenant document (Attachment A).

After these work sessions have concluded, an additional work session may 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. The draft covenant will be thoroughly reviewed by the Town Attorney prior to moving forward with adoption. Staff anticipates receiving legal comments at the January 14th work session as time was not given for review prior to distributing information in the packet.

Questions posed to Council on January 14th include:

- 1) **Lottery.** At the December 10th work session, Council supported moving into a lottery process for sale of properties with Covenants on them. Staff has provided an outline in this staff report that will be presented at the work session. Does the Council agree with the suggested priorities for extra tickets in the lottery?
- 2) **Proposed Resale Calculation with Capital Improvements.** At the December 10th work session, Council supported having the resale of properties allow for the sum of the purchase price plus 3% a year plus unlimited capital improvements. Staff has provided a summary in this staff report noting the loss of buyer affordability that could occur. Does the Council want to allow a sum of purchase price plus 3% a year plus unlimited capital improvements?

- 3) **Owner and renter employment requirements.** At the December 10th work session, Council gave direction to not have an employment location requirement after purchase of a property. Staff has provided a summary in this staff report of the effects of this in correlation with the use of 5A funding.
 - a. Does the Council want to continue in the direction provided at the December 10th work session?
 - b. If they do, then Staff would like direction as to if renters need to be employed within Summit County or if they also do not need to meet an employment location requirement.
 - c. Enforcement. If the occupants of a unit do not meet the employment requirements of the unit, staff would like clarity from Council on enforcement and/or the implementation of a fee.
 - d. Opting into new covenant. Based on the direction given on employment location requirements, if an existing homeowner chooses to opt into a new covenant, do they need to comply with an employment location requirement?
- 4) **Other.** Does the Council have concerns/revisions not discussed with regards to the draft Housing Restrictive Covenant as presented in Attachment A?

Background:

Workforce housing units are government subsidized, meaning tax dollars are used to build the units. These housing units are priced below market rate and do not appreciate at the same rate as market rate homes. Staff have heard Council express the following goals and/or ideas specific to workforce housing:

- Housing local workforce in Summit County
- Stable housing
- Keeping units affordable for future buyers
- Upward mobility, which may not mean moving into a market rate home
- Applaud people for success, do not restrict success
- Encourage the upkeep of properties

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. 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.

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.

The goal of any modification to the deed restrictions shall be to keep the unit affordable for future buyers, allow the seller flexibility in price that allows for competition among sellers and encourage capital investments to promote upkeep and maintenance of the units. These goals are consistent with what staff have heard Council express about workforce housing over the last three work sessions on this topic.

In 2019, through Resolution 19-27, the Town Council adopted a new Residential Housing Restrictive Covenant and Notice of Lien document (Attachment B) 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. If the Town pursues modifying the standard covenant, any modifications approved in the future will not be automatic changes to deed restrictions, property owners would be required to opt-in to the proposed new covenant.

Analysis

Lottery. At the December 10th work session, Council supported moving into a lottery process for sale of properties with Covenants on them. After discussions with the SCHA, the recommended approach by SCHA is to have the Town reserve the right for a property to be sold via a lottery. Summit County states that they shall have seven days after receiving an intent to sell to determine whether a lottery will be required. Breckenridge has ten days after receiving a notice of intent to sell to determine if a lottery will be required. Breckenridge and Summit County have begun using this approach since if there becomes a lower buyer pool, they do not want sellers to be locked into a lottery requirement.

The concern with this approach is that other local jurisdictions have administrative rules and regulations and/or guidelines in place which outline the lottery process along with other housing topics. The Town does not currently have administrative Rules and Regulations or Housing Guidelines. If the Town continues to not have this supplemental document, then the guidelines for the lottery shall be inserted directly into the Covenant.

Discussion held at the December 10th work session included support for a priority for lottery entrants who have longevity within the Town through employment and/or residency. There were differing opinions of giving priority for Frisco or Ten Mile employment locations. It was also discussed that priority towards certain work, such as non-profit work, could be prioritized. Staff has reviewed other jurisdiction’s lottery requirements and priorities and has provided the following as a starting point for Council discussion:

- A. *Priority in the lottery will be given to applicants who have been working for a business located within the Town of Frisco an average of 30 hours/week on an annual basis for*

- at least two (2) consecutive years. Documentation of this will need to be provided through tax returns, employment verification letter from employer, or through an affidavit. Applicants meeting this criterion will receive an additional entry in the lottery.*
- B. Priority in the lottery will be given to applicants who have lived and/or worked for a business located within Ten Mile Basin for five years or more. Documentation of this will need to be provided through tax returns, employment verification letter from employer, or through an affidavit. Applicants meeting this criterion will receive an additional entry in the lottery.*

An applicant who meets both A and B shall be permitted two additional entries into the lottery. No more than two additional entries will be permitted per applicant.

When determining priorities, it is important to ensure that any requirements can be verified during the application process. At this time, there is not a priority given for non-profit work as it is difficult to define and enforce what type of employment would qualify. There is also not a priority given for applicants who have not been selected in other housing lotteries. This is due to it encouraging individuals to apply for units they are not interested in so they can then get an extra ticket to a future lottery for a unit they want.

At the December 10th work session, it was suggested that if an applicant applies for a unit through a lottery and is selected for that unit but turns it down, they not be permitted to apply for another lottery for a certain amount of time. Staff has suggested language within the covenant to this effect, stating:

If an individual has applied to a housing lottery within the Town of Frisco and been selected for that unit but chose to not purchase it, then that individual shall not be allowed to reenter a Town of Frisco housing lottery for a minimum of thirty (30) days.

The SCHA has provided information on recent lotteries and if applicants with additional tickets have been selected for housing units. The conclusion is that the SCHA does see in weighted lotteries that people having extra ticket(s) will most likely be in the top half of the draw (at least one of their tickets). Hard data on a recent weighted lotteries is as follows:

Mountain Side & Cedar Lodge

- There were 34 total entries into the lottery with 7 people earning an extra entry. Of the 34, 5 of the 7 people ended up in the top 17 (or top half of the draw).

Nellie's Neighborhood

- Of the 20 people who received an additional entry, 15 of those ended up in the top 50%.

Staff is seeking Council feedback on the proposed lottery language, pages 8 and 10, as outlined in the edited 2019 Covenant document (Attachment A).

Proposed Resale Calculation with Capital Improvements. At the December 10th work session, Council supported having the resale of properties allow for the sum of the purchase price plus 3% a year plus unlimited Qualifying Capital Improvements (QCI). Staff notes that resale calculations performed this way have the potential to lose buyer affordability but also recognize that a property owner would have to lower their sale price if they cannot find a qualified buyer. Staff supports 3% a year but suggests the Council ensure that they want to allow an unlimited Qualified Capital Improvement. Examples of other jurisdiction capital improvements are illustrated in Table 1 below.

Table 1: 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
South End Village, Frisco	Selected Units are permitted PCIs at 10% of the original sale price of the unit

As a follow-up to a prior work session, Staff inquired as to how the Wellington Neighborhood in Breckenridge recoups costs for Accessory Dwelling Units (ADUs). Wellington 1 (first phase) was allowed 15% of the original purchase price to be added as capital improvements (added livable space, garages, sheds and energy efficiency upgrades). In Wellington 2 and Lincoln Park, it was changed to 10% of the original sale price. The original sale price is what the first owner purchased the property for and that 10 or 15% never changed. For example, if a property was \$350k at the original sale, the homeowner(s), no matter how many times it sold, still only had \$35,000 (10%) or \$52,500 (15%) for capital improvements, which would be for the garage or the bonus room. Many homeowners added bonus rooms and were only able to add the allowed max to the resale. They recouped that amount by renting the bonus room. If someone added a garage at any time, the capital improvement maximum was always used. It is noted that whereas building permits that have applied for garages in the Peak One Neighborhood valued their garage between \$32,000 - \$50,000, a garage plus bonus room can cost over \$100,000.

No matter what the maximum resale calculation is calculated to be, a seller will be required to find a qualified buyer. If they cannot find a qualified buyer for their listed sale price, they will be required to lower their sale price until they find a qualified buyer.

Does the Council want to allow the resale calculation to be a sum of purchase price plus 3% a year plus unlimited capital improvements?

Owner and renter employment requirements. At the December 10th work session, Council gave direction to not have an employment location requirement after purchase of a property. If the Town pursues this direction, then it could be stated that the Covenant would not be tied to local workforce housing. More time for review is required, however it has been brought up since the December 10th work session that if the covenant is not in line with the use of 5A funds, then it cannot be used

for any projects that are funded with 5A funds. The current IGA states that all funds must be used for local workforce for low to moderate income. This would lead to the new covenant to not be used for projects where 5A funds have been or will be used. Staff will need more time to determine which projects this could include. To ensure that workforce housing is provided within the covenant, Staff suggests the Council consider requiring employment verification at annual monitoring and ensuring that the covenant continue to require a resident earns his or her living from a business operating in Summit County, by working at such business an average of at least 30 hours per week on an annual basis.

As stated at the December 10th work session, if the occupants of a unit do not meet the employment requirements of the unit at annual monitoring, then the Town would pursue enforcement action. A suggestion was made that instead of requiring the sale of unit, the Town consider a fee to be paid for violation of the employment requirement. Staff will refer to legal advice on this topic and requests Council provide further feedback on enforcement actions including the introduction of a fee as opposed to requiring the sale of the property.

If the Council chooses to continue in the direction provided at the December 10th work session, then Staff requests direction as to if renters of a deed-restricted property need to be employed within Summit County or if they also do not need to meet an employment location requirement. The majority of covenants allow a property owner of a deed-restricted property to rent their unit for a maximum of twelve months. Staff is unsure if the change is made to an owner not needing to meet a local employment requirement, if it means a renter also does not need to meet local employment requirements.

Does the Council want a potential new covenant to read that no employment location is required after the purchase of a deed-restricted property?

Opting into new covenant. Based on the direction given on employment location requirements, if an existing homeowner chooses to opt into a new covenant, do they need to comply with an employment location requirement? If a new covenant is approved which only requires local employment verification at time of purchase, then Staff requests direction as to if a current owner of a property needs to meet a local employment verification at time of entering into the new covenant. For example, if the residents have changed jobs since purchasing the unit and no longer are employed for a business operating in Summit County, can they enter into the new covenant? The language of the covenant appears to demonstrate that they can enter into the new covenant but Staff is unsure if this is the intent, or if clearer language needs to be added.

Summary:

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- 4) **Other.** Does the Council have concerns/revisions not discussed with regards to the draft Housing Restrictive Covenant as presented in Attachment A?

Staff reminds Council that the current covenant has been in place since 2019. It is at Council's discretion if they want to make changes to the standard covenant. They are not required to make any changes.

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 2024 Strategic Plan, includes the strategic objectives of "Support a Thriving Economy", "Enhance Community Inclusivity". Within this priority, it is stated to:

- Diverse Housing: Offering a variety of housing types to support the workforce and residents.
- Workforce and Community Support: This pillar focuses on increasing workforce housing to appropriate levels, supporting increased access to childcare, and continuing to support regional transit and mobility improvements.

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.

During the September 16, 2024, work session, Council also noted that they need to understand the interplay between all these recommendations/decisions and the unintended consequences. At the end of these work sessions, staff will provide a summary of Council direction and will assist with identifying potential consequences of any future changes.

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

- Diane McBride, Assistant Town Manager
- Tom Fisher, Town Manager

Attachments:

- Attachment A – 2019 Restrictive Covenant with revisions reflective of prior work session discussions
- Attachment B – 2019 Residential Housing Covenant and Notice of Lien (original)