



MEMORANDUM

P.O. Box 4100 † FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: KATIE KENT, COMMUNITY DEVELOPMENT DIRECTOR**  
**RE: NEW BUSINESS: HOUSING RESTRICTIVE COVENANT DISCUSSION**  
**DATE: AUGUST 27, 2024**

**Summary:** The purpose of the Housing Restrictive Covenant New Business item on the August 27<sup>th</sup> agenda is to hear public input regarding the options being considered by the Town Council to potentially modify the method of calculating resale asking prices.

Options to consider may include:

- *Option 1:* No Changes. Keeping the Resale Calculation the same as is represented in Frisco's current standard Housing Restrictive Covenant adopted in 2019.
- *Option 2:* Standard Increase. Utilizing a standard increase in percentage rate, not compounded
  - 2% is typical of other jurisdictions within the county
  - 3% would revert back to be more similar to the original Frisco covenant languages of many properties
- *Option 3:* Per the January 13, 2023 property owner request: the greater of either a standard non-compounded percentage increase or the Maximum Sales Price represented on the Summit Combined Housing Authority (SCHA) Summit County Area Median Income spreadsheet.
- *Option 4:* Adding Qualifying Capital Improvements.
  - QCIs can be capped as is typical in other jurisdictions within the County
  - QCIs do not need to have a cap if the Town Council feels it needs to incentivize property owners to maintain their properties
- *Option 5:* Other. Through the discussion with Council and public input, additional options may be considered.

A work session will be held with the Council on August 27<sup>th</sup> prior to this New Business item to review Housing Restrictive Covenants including what they are and why they exist. Additionally, this work session will be an opportunity for Staff to explain the resale calculation formulas commonly utilized within the Town and compare them with other resale calculation formulas used in other jurisdictions.

This is the first of four (4) scheduled meetings on Housing Restrictive Covenants:

- August 27, 2024: Resale Calculations
- September 24, 2024 (tentative): Opt in Time, Eligible Household Income, Qualifying Capital Improvements, Definition of Resident, Initial Purchase Price, Buyer Selection, Priority Period, Asset Limit

- October 22, 2024 (tentative): Continued Discussion on Opt in Time, Eligible Household Income, Qualifying Capital Improvements, Definition of Resident, Initial Purchase Price, Buyer Selection, Priority Period, Asset Limit
- November 12, 2024 or December 10, 2024 (tentative): Potential new covenant presented/adopted.

At this meeting on August 27<sup>th</sup>, Staff will seek direction from the Town Council on if the current maximum resale calculation within the standard covenant shall be modified. If the Council would like the calculation modified, Staff seeks direction on what changes to begin drafting. Council may opt to make this decision during the August 27<sup>th</sup> meeting or, they may chose to listen to all the upcoming meetings on Housing Restrictive Covenants before making a final decision.

**Analysis:**

This work session topic and 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 spreadsheet changed. Some homeowners have expressed concern that this change has negatively affected their-home resale calculations due to the current Covenant. Staff is prepared to provide an explanation at the work session as to how this change effected the numbers on the table. 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.

**Maximum Resale Price**

The 2019 Covenant’s maximum resale price utilizes a formula that is not to exceed the maximum sales price, as stated on the Summit County Area Median Income (AMI) spreadsheet for that property. A break-down of how you can get to the maximum resale price through the 2019 covenant is as follows:

- Purchase Price
  - Plus 3% a year (not compounded)
  - Plus Qualified Capital Improvements (QCI)
  - Plus \$ paid for real estate commission
- = a value no greater than the number on the 2024 AMI spreadsheet for that unit type

Frisco is the only Town within Summit County to tie a maximum resale calculation to the AMI spreadsheet price. Community members expressed in August of 2023 that they do not feel that utilizing the Summit County Area Median Income (AMI) allows a spread of resale prices in restricted housing unit since it creates more standard resale prices. There is not consistency throughout the County with regards to resale calculations.

*Table 1: Resale Price Examples*

TOWN	Development Name	Resale Calculation
Breckenridge	Blue 52	2% per year, not compounding; plus cost of QCIs; plus sales commission up to 1%

Dillon	Sail Lofts	The greater of: 1. the Maximum Sales Price in the 2017 AMI chart, based on the purchaser's income and size of the unit, or 2. Initial sale plus 2% fixed appreciation, plus capital improvement costs to a maximum of 3% of the Maximum Resale Price prorated over the 10-year period prior to the sale, plus up to 1.75% in sales commission.
Silverthorne	Smith Ranch	2% per year, not compounding; plus cost of limited capital improvements, not to exceed 5% of initial purchase price over every 10 year period; plus sales commission up to 1.75%
Summit County	Dillon Valley Vistas	2% per year, not compounding; plus cost of QCIs, not to exceed 10% of initial purchase price over every 10 year period; plus sales commission up to 1.75%

Staff reports written in 2019 state that the goals of any modification to the Covenant shall be:

- Keep the buyer's price in the same or similar affordable range as when the unit was previously purchased
- Allow the seller flexibility in price allowing for competition among sellers
- Encourage capital investment while also promoting upkeep and maintenance of the units

*Evaluation of Potential Alternative Methodologies for Calculating Maximum Resale Prices.*

The purpose of this exercise is to research and evaluate viable alternative methodologies for calculating permitted resale price that would more effectively balance the goals of the Town's affordable workforce housing program.

An analysis has been performed, and attached as Attachment C, which lists a variety of restricted properties and includes for each:

- Number of Bedrooms
- Last Sale Date
- Last Sale Price
- Purchase Price + 3% (not compounded)
- Purchase Price + 2% (not compounded)
- Maximum Resale Price based on Summit County AMI Chart

The Difference column demonstrates which properties exceed the maximum resale price based on the AMI chart when adding 3% a year to the purchase price since date of purchase. Figures shown in red font represent the additional value the property owner could receive if they had 3% a year and were not capped by the Summit County AMI chart. It is important to note that if the value is shown in red, then the 3% a year may put that resale value out of the affordability range as stated by HUD (30% of a household income to include utilities, HOA fees, etc.).

**Summary:**

While determining if Staff should revise the standard housing restrictive covenant, Council needs to consider the following:

- The higher the value resulting from a resale calculation, the more the property will be worth at resale, but probably the less affordable the property will be for a new buyer.
- The higher the value of the resale, the possibility that equity at sale could be used to graduate to other property in Summit County.

- What measures of success for properties with covenants on them is the Council looking for?
  - Encourage equitable mobility?
  - Keep buyer affordability as low as possible?
  - Other measures of success
- Do any proposed modifications keep the affordability of the properties along with serving a benefit to the community as a whole?

On August 27<sup>th</sup>, Staff requests Council provide direction on maximum resale price. Options to consider may include:

- *Option 1: No Changes.* Keeping the Resale Calculation the same as is represented in Frisco's current standard Housing Restrictive Covenant adopted in 2019.
  - *Option 2: Standard Increase.* Utilizing a standard increase in percentage rate, not compounded
    - 2% is typical of other jurisdictions within the county
    - 3% would revert back to be more similar to the original Frisco covenant languages of many properties
  - *Option 3:* Per the January 13, 2023 property owner request: the greater of either a standard non-compounded percentage increase or the Maximum Sales Price represented on the Summit Combined Housing Authority (SCHA) Summit County Area Median Income spreadsheet.
  - *Option 4: Adding Qualifying Capital Improvements.*
    - QCI's can be capped as is typical in other jurisdictions within the County
    - QCI's do not need to have a cap if the Town Council feels it needs to incentivize property owners to maintain their properties
- Option 5: Other.* Through the discussion with Council and public input, additional options may be considered.

**Financial Impact:** If the Town decides to modify the resale calculation within the Town of Frisco's Residential Housing Restrictive Covenant and Notice of Lien document, the financial impact is that the Council could be modifying how it preserves the public investment in covenant restricted workforce housing to ensure that it remains 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 and possible revisions of the 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 – SCHA 2024 Summit County Area Median Income (AMI)  
Attachment C – Analysis of existing properties resale calculation examples