



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 III
DATE: DECEMBER 10, 2024

Summary:

The work session on December 10, 2024, is the third work session with Council on Housing Restrictive Covenants. The first work session was held on August 27, 2024, and the second work session on September 16, 2024. Two additional work sessions will be scheduled with Council in early 2025. 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 December 10, 2024, work session is for staff to provide explanations regarding the following topics found within Housing Restrictive Covenants ("Covenant"):

- Buyer Selection
- Initial Purchase Price
- Priority Period for Defined Employment Location

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.

Topics already covered in the first two 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.
- Qualifying Capital Improvements (QCI).
- Asset limit testing.

Future work session topics include:

- Duration of Time to opt into new covenant and should 2019 covenant be extinguished.
- Definition of Resident (for the purpose of qualifying to purchase deed restricted housing).
- Ownership of other land.

These future work session topics may be reviewed with Council during the December 10, 2024 work session if time permits. After these work sessions have concluded, an additional 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.

Questions posed to Council on December 10th include:

- 1) Buyer Selection. The standard Covenant currently allows a seller to pick a qualified buyer of their choice. Would Council like to require the sale of a property with a Covenant on it to include a lottery process or waitlist for buyer selection?
- 2) Initial Purchase Price. Would Council like to have all initial purchase prices follow the Summit County Area Median Income (AMI) table?
- 3) Priority Period for Defined Employment Location. The Town currently has a priority period for employment within the Town of Frisco boundary. Does the Council want to remove the priority period for Frisco employment completely and/or do they want to broaden the employment location during a priority period?

If time permits during the December 10th work session, staff will be prepared to review the topics covered at the last two work sessions and/or introduce the topics that have not been discussed yet.

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 (Attachment A). 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 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 and encourage capital investment while also promoting upkeep and maintenance of the units.

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

- 1) Buyer Selection. The standard Covenant currently allows a seller to pick a qualified buyer of their choice. Would Council like to require the sale of a property with a Covenant on it to include a lottery process or waitlist for buyer selection?
 - a. The Council could also recommend that no changes be made to the current buyer selection language.

Background

The majority of original covenants in Frisco state:

In the event that an Owner shall desire to Transfer his Property, or in the event that an Owner shall be required to Transfer his Property pursuant to the terms of this Restriction, he shall notify the SCHA, or such other person or entity as may be designated by the Town, in writing of his intention to Transfer his Property. The Property may be offered, advertised, or listed for sale by such Owner at such Owner's sole cost and expense, in any manner in which such Owner may choose. An Owner may list the Property for sale through SCHA for a commission equal to 2.0% of the sales price. The Property shall not, however, be sold, transferred and /or conveyed to any person, entity, or entities, (i) other than a Resident Eligible Household, or non - qualified buyer under Section 5. 1. B., qualified and approved by the SCHA or the Town in such as manner as will allow the SCHA or the Town to execute the approval set forth in Section 5. 3 of this Restriction (a " Qualified Buyer "), and (ii) for consideration to be paid by such qualified Resident Eligible Household that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article VIII.

Due to continuous concerns raised by the public that the above stated language was leading to property sales that included “behind the scenes deals” such as furniture transfers, cash given not included in sale price, etc., and requesting the Town consider requiring a different way for sales to occur, the 2019 covenant modified buyer selection language to state:

8.2. Notice and General Limitations on Resale. In the event that an Owner shall desire to Transfer his Property, or in the event that an Owner shall be required to Transfer his Property pursuant to the terms of this Restriction, he shall notify the SCHA and the Town of Frisco, or such other person or entity as may be designated by the Town, in writing of his intention to Transfer his Property. The Property may be offered, advertised, or listed for sale by such Owner at such Owner's sole cost and expense, in any manner in which such Owner may choose. An Owner may list the Property for sale through SCHA for a commission equal to 2.0% of the sales price. Except as otherwise set forth in this Section 8.2, the Property shall not, however, be sold, transferred and/or conveyed to any person, entity, or entities, (i) other than a Resident Eligible Household, or non-qualified buyer under Section 5.1.B., qualified and approved by the SCHA or the Town in such as manner as will allow the SCHA or the Town to execute the approval set forth in Section 5.3 of this Restriction (a "Qualified Buyer"), and (ii) for consideration to be paid by such qualified Resident Eligible Household that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article VIII. Any other provision of this Restriction notwithstanding, upon resale of the Property: (i) a Household shall qualify as a an "Eligible Household" if it earns not more than twenty percent (20%) more AMI than the AMI percentage set forth in Subsection 1.1(D) above; provided, however, that such qualification shall have no impact on the determination of the Maximum Resale Price under Section 8.3 below; and (ii) during the first thirty (30) days after listing the Property for sale with written notification to the Town of Frisco and the Summit Combined Housing Authority (SCHA), and in a manner accessible to the general public, the Property may be sold or contracted for sale only to a "Resident" who at the time of purchase earns his or her living from a business operating in the Town of Frisco, by working at such business an average of at least thirty (30) hours per week on an annual basis and who qualifies as an "Eligible Household" by earning not more than (___%) AMI.

This current language requires a seller to list the property publicly, allowing anyone interested in submitting an application to the SCHA to be qualified to purchase. The SCHA then qualifies applicants based on the covenant requirements (income limit and employment location). The seller is given the list of qualified applicants who meet the priority period and can then choose which of those applicants they would like to sell to, and they work through realtors to move forward with the sale.

Whereas the current process outlined in 2019 makes the sale of a property more public, the Town is still receiving public input that a lottery or a waitlist should be considered. If the Town wants to further regulate the sale of properties restricted by a covenant, then they can consider a waitlist, lottery, or other method they may come up with. A waitlist or lottery could be said to be a method that improves program administration while engaging current best practices for qualification and compliance processes.

Waitlist

A waitlist priority system could be used for the resale of units. Through this method a seller of a restricted unit would advertise it for sale through the SCHA, similar to a unit for sale through a lottery system.

- Interested buyers for the unit would submit an application to SCHA.
- SCHA would go through each application to ensure compliance with income, employment location, etc.
- Qualified applicants would then be checked with the years/months they have lived within Summit County or other defined location.
- The qualified applicant who has lived within the defined area for the longest period of time would be chosen for the unit.

The waitlist option is a method that would benefit a potential buyer who has lived in the defined location for the longest period of time. The waitlist option would also benefit a buyer who went through a change of life situation, such as a divorce, and needs housing to remain established in the community.

The waitlist option would not benefit local businesses trying to recruit new employees from out of the area who have specialized skills that they cannot find through local job applicants. This could include teachers, medical staff, local government, etc. If an employer found a job candidate and required them to move to Summit County, that employee would be placed on the bottom of the waitlist and therefore may not have an opportunity to purchase a restricted unit for a lengthy amount of time. The waitlist option would also not benefit a seller who would like to sell their unit to a person they know, and it also would not benefit a person who wanted to buy their friends' house and could not automatically buy it through a traditional real estate transaction.

If the Council chooses to have the waitlist option pursued, staff requests guidance on how to establish guidelines on questions of eligibility including:

- How to confirm year-round residency for the length of time that exceeds a person potentially having tax returns and other applicable information available for?
- How to confirm a place on the waitlist if a prospective buyer has vacated the County throughout their longevity here for a period of time such as three months, six months, etc.?

No units within Summit County currently use a waitlist option and so this would also be a new system for the SCHA to adapt to and modify their computer software to be utilized for.

Lottery Process

Local jurisdictions are commonly switching to a lottery system requirement for sale of restricted units. The Town of Frisco is currently utilizing a lottery system for housing helps units that are purchased by town, having a covenant recorded on them, and resold to a qualified buyer if one does not already exist in the unit. The lottery system process is:

- A seller of a restricted unit would advertise it for sale through the SCHA.
- Interested buyers for the unit would submit a lottery pre-screening form to SCHA.
- Interested buyers have five (5) days to apply for the unit through the SCHA.
- A lottery is done, usually within three (3) days of the close of the application process.

- The first four drawn numbers go through a complete qualifying process to ensure they meet all income, employment location, and other applicable requirements.

Priority in the lottery process. If the Town utilizes the lottery process for unit resales, they can determine if they want to allow extra tickets for certain factors to benefit buyers. This could include, but not be limited to, an extra ticket for:

- Employment location with optional required minimum length of time (example: 5 years working year-round within Frisco boundary)
- Current residence location with optional required minimum length of time (example: 5 years residing year-round within Frisco boundary)
- Income priority requirement

The lottery option is a method that would benefit a potential buyer who thinks it is unfair that a seller can pick their buyer as the lottery puts all buyers in an entry with a fair chance of being drawn.

The lottery option would not benefit a seller who would like to sell their unit to a person they know, and it also would not benefit a person who wanted to buy their friends' house and could not automatically buy it through a traditional real estate transaction.

- 2) Initial Purchase Price. Would Council like to have all initial purchase prices follow the Summit County Area Median Income (AMI) table? Original Covenants, and the 2019 Covenant, typically state that the initial purchase price is a formula based on the number of bedrooms, AMI, deduction of \$350 for interest on a mortgage loan, and an interest rate. The current way to calculate the initial purchase price is a complex method that is confusing and variable.

Staff is requesting Council provide direction if they would like a change made to the Initial Purchase Price from the 2019 Covenant. Staff suggests that the initial purchase price formula be removed in entirety and replaced to state that the initial purchase price shall be what is stated for the number of bedrooms and AMI as stated on the 2024 Summit County Area Median Income spreadsheet effective at the time of listing the property. This is more closely aligned with how other jurisdictions are identifying initial purchase price as illustrated in Table 1 below.

Table 1: Initial Purchase Price Examples

TOWN	Development Name	Initial Purchase Price
Breckenridge	Blue 52	Upon completion of construction of each Unit, the Unit shall be sold to a Qualified Owner at an affordable Purchase Price as determined by the Housing Authority.
Dillon	Sail Lofts	Each Restricted Unit shall be sold to a Qualified Occupant at a Purchase Price to be determined according to the attached 2017 HUD guidelines for Summit County. Said initial price may be adjusted upwards in years subsequent to 2017 based on the

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		applicable AMI rates for such years but shall not decrease below the 2017 AMI rates contemplated herein...
Silverthorne	Smith Ranch	Upon completion of construction of each Unit by the Declarant, the Unit shall be sold to a Qualified Owner at a purchase price determined by the Town, in collaboration and agreement with the Declarant, which price shall not exceed the purchase price affordable to a person making the percentage of AMI applicable to the Unit as set forth in Exhibit C.
Frisco 2019 Covenant		<p>Except as may be permitted under Section 5.1.B. above, upon completion of construction by the Declarant, the Property shall be sold to initial purchasers who qualify as a Resident and an Eligible Household at a Purchase Price that shall be determined by the SCHA or the Town as follows:</p> <ul style="list-style-type: none"> (a) The number of bedrooms within the Property shall be determined and that number of bedrooms shall, in turn, determine the size of the household for which the Area Median Income shall be determined as follows: (i) for a one-bedroom dwelling unit, a 1.5 person household; (ii) for a two-bedroom dwelling unit, a 3 person household; (iii) for a three-bedroom dwelling unit, a 4.5 person household; and (iv) for a four-bedroom unit, a 6 person household; (b) The Area Median Income for a household of a size determined in accordance with subpart (a) above shall be determined; (c) The amount of Area Median Income determined in accordance with subpart (b) above shall be divided by twelve (12), and the number derived shall then be multiplied by .30 to determine the total dollar amount available to the household on a monthly basis for the payment of principal, interest, taxes, insurance and homeowner's association dues in connection with the purchase of the Property; (d) The amount of \$350 shall be subtracted from the total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (c) above) in order to determine the total dollar amount available to the household on a monthly basis for the payment of principal and interest on a mortgage loan for purchase of the Property;

		<p>(e) The total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (d) above) shall be used to determine the Purchase Price, through extrapolation, by determining the maximum loan amount that said dollar amount will support, assuming a mortgage loan with a standard amortization schedule, a term of thirty (30) years (360 months), an annual interest rate of ____% and a 90% loan to value ratio; and</p> <p>(f) The interest rate to be used to perform the calculation described in subpart (e) above shall be the greater of:</p> <p>(1) the actual interest rate obtained by the Eligible Household for purchase of the Property with a mortgage loan with a term of thirty (30) years; and</p> <p>(2) the interest rate determined by calculating, from data published by the Federal Home Loan Mortgage Corporation, the average interest rate, for the preceding ten (10) calendar years, for a thirty-year fixed rate loan, and adding thereto 1.5%.</p>
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- 3) **Priority Period for Defined Employment Location.** The Town currently has a priority period for employment within the Town of Frisco boundary. Does the Council want to remove the priority period for Frisco employment completely and/or do they want to broaden the employment location during a priority period?

The 2019 Covenant has a 30-day priority period for a purchaser who works within the Town of Frisco boundary. Any restricted property sold under the 2019 covenant has gone under contract within the first thirty (30) days as there has always been a qualified buyer who works within the Town boundaries. Community feedback received by the Town has opposed this priority period as it limits qualifying buyers and does not recognize employment locations that are in close proximity to the Town boundary and provide important services.

- Examples of employment locations that are not included in the priority period include: Copper Mountain, Summit Middle School, Summit High School, Summit County Sheriff's Office, Summit County Government, CommonSpirit Hospital and the Medical Office Building on Peak One Blvd.

Table 2: Employment Geography Examples

TOWN	Development Name	Employment Geography
Breckenridge	Stables	Extra lottery ticket for Upper Blue Basin, then Summit County
Breckenridge	Blue 52	Summit County

Dillon	Sail Lofts	10 day priority for workers in Town of Dillon; then Summit County
Silverthorne	Smith Ranch	Priority for Silverthorne, then Summit County plus 2 miles outside border
Summit County	Dillon Valley Vistas	10 day priority for workers in Snake River and lower Blue Basin and workers in County for 10+ years
Frisco 2019 Covenant		30 day priority for Town of Frisco boundary then Summit County

- Staff requests feedback from Council if they want to maintain the same priority employment location (Frisco); or have priority period for:
 - One Mile Buffer around the Ten Mile Basin (this is the current boundary used for the Frisco Housing Helps program); or
 - Remove any priority period for employment location and allow any purchaser who 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; or
 - If the Council supports a lottery system, then they can consider extra ticket(s) for prospective buyers who work within a defined geographic location.

Summary: As a result of the December 10th work session, staff expects Council to have a full understanding of:

- Buyer Selection
- Initial Purchase Price
- Priority Period for Defined Employment Location

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) Buyer Selection. The standard Covenant currently allows a seller to pick a qualified buyer of their choice. Would Council like to require the sale of a property with a Covenant on it to include a lottery process or waitlist for buyer selection?
- 2) Initial Purchase Price. Would Council like to have all initial purchase prices follow the Summit County Area Median Income (AMI) table?
- 3) Priority Period for Defined Employment Location. The Town currently has a priority period for employment within the Town of Frisco boundary. Does the Council want to remove the priority period for Frisco employment completely and/or do they want to broaden the employment location during a priority period?

Staff reminds Council that they are not required to make changes to the standard covenant.

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 SCHAs, 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 – 2024 Summit County Area Median Income (AMI)
Attachment B – 2019 Restrictive Covenant
Attachment C – Email from Alex Beach dated October 22, 2024
Attachment D – Email from Alex Fitch dated September 9, 2024