

**TOWN OF SAN ANSELMO
STAFF REPORT
May 28, 2021**

For the Meeting of June 2, 2021

TO: Racial Equity Ad Hoc Task Force
FROM: Elise Semonian, Planning Director
SUBJECT: Restrictive Covenant Modification program

RECOMMENDATION

That the Town join the County of Marin to promote the Restrictive Covenant Modification program through social media and the Town newsletter and web site and encourage property owners to submit information on their racially restrictive covenants to the Town.

BACKGROUND

The Town will soon begin updating its General Plan Housing Element to plan adequate sites for development of the Town’s share of the Regional Housing Need Allocation (RHNA) for 2023-2031. Approximately half of the Town’s draft RHNA allocation of 833 units is for low and very low-income housing.

In 2018, the California legislature passed [Assembly Bill No. 686](#) “Housing discrimination: affirmatively further fair housing.” New State housing element law requires the Town to develop programs to promote and affirmatively further fair housing opportunities and promote housing throughout the community for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other protected characteristics.¹

The Town’s updated Housing Element will need to include an assessment of fair housing in the Town and all the following components:

1. A summary of fair housing issues and an assessment of the Town’s fair housing enforcement and fair housing outreach capacity.
2. An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk.
3. An assessment of the contributing factors for the fair housing issues identified.

¹ [California Government Code Section 65583](#)

4. An identification of the Town’s fair housing priorities and goals, giving highest priority to those factors identified that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved.
5. Strategies and actions to implement those priorities and goals, which may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement.

The County recently prepared a [2020 Marin County Analysis of Impediments to Fair Housing Choice \(AI\)](#) after a community engagement process. The 2020 Marin County AI identifies four impediments to fair housing choice in the county: 1.) Community opposition to affordable housing; 2.) The cost of developing affordable housing; 3.) Lack of affordable housing sites; and 4.) Lack of opportunities for home ownership by people of color and on-going concerns of gentrification. This County document will help inform the fair housing programs in the next Town Housing Element and the Town may incorporate relevant portions into its Housing Element.

To analyze the Town’s integration and segregation patterns and trends for the Housing Element update, Planning Department staff intends to research deeds at the Marin County Recorder’s office to document the history of racially restrictive covenants and determine their extent in the Town. Involving the community in this effort may educate residents of the history of discrimination in the Town.

Racial deed restrictions became common after 1926 when the U.S. Supreme Court found them acceptable and not prohibited by law.² They were recorded when a lot was created, when a subdivision was approved, or when a home was built. Backed by federal legislation in the 1930s, known as redlining, home loans were prohibited to certain races and ethnicities. Lending policies also required builders to record racially restrictive covenants.

Most of the Town was subdivided in the early 1900s after the railroad was extended to the Town, which connected to San Francisco ferries. The Town’s first zoning regulations were adopted in 1926. Since that time, the Town has always had areas that allowed for multi-family development and apartments, and areas where only single-family homes are allowed. We know that Morningside Court, where single family homes were built and sold in the early 1930s, had restrictive covenants specifically restricting the lease, use and occupation to Caucasians. This type of systemic racism prohibited people of color from purchasing homes in Marin County and purposefully increased segregation among white people and people of color. Racial covenants determined housing options in Marin that still affect neighborhoods today.

² Corrigan v. Buckley, 271 U.S. 323 (1926)

In 1948, the U.S. Supreme Court declared that racial restrictions would no longer be enforced.³ But, it remained legal for realtors and property owners to discriminate based on race.

On April 11, 1968, just 7 days after the assassination of Dr. Martin Luther King, the Civil Rights Act was signed into law. The Fair Housing Act prohibits discrimination in the sale, rental, and financing of housing based on race, color, religion, or national origin. The Act established the legal duty to affirmatively further fair housing (AFFH) to address housing discrimination and segregation. Congress has amended the law twice to expand and enhance its protections. Since 1968, racial covenants are illegal and cannot be enforced.

RESTRICTIVE COVENANT MODIFICATION

Since 2005, State law permits any owner to file a "Restrictive Covenant Modification" (RCM) form that effectively records over the impermissible covenant and removes the offensive covenant from any subsequent documents that would be sent to future buyers. The process is outlined in [Government Code Section 12956.2](#). State law also notifies a buyer that the documents may contain racially restrictive and offensive provisions and informs buyers of their right to file an RCM with the county recorder. However, existing law still does not prevent buyers from seeing offensive language in deeds and CC&Rs.

Recent news reports describe unsuspecting buyers encountering offensive language in these documents at some point in the buying process, including when they are signing final documents as part of the escrow process. For buyers of color, this language is a particularly offensive and painful reminder of a history of racial hostility and exclusion. Indeed, some reports suggest that buyers have walked away from these deals rather than sign or receive documents with offensive language, even if that language is no longer enforceable.⁴

Property owners may find restrictive covenants by looking at the title report they received when purchasing the property, or sometimes when refinancing. Any restrictive covenants may be obtained from the Marin County Recorder's Office located at the Marin County Civic Center in Room 232 during their business hours (appointments may be necessary during Covid 19) or by ordering them through the Recorder's website.

The property owner can redact a racially discriminate covenant from their deed by taking the following steps:

1. Complete the Marin County Recorder's Office Restrictive Covenant Modification Form, which can be found at <https://www.marincounty.org/-/media/files/departments/ar/recorder/restrictive-covenant-modification-fillable-format.pdf?la=en>

³ Shelley v. Kraemer, 334 U.S. 1 (1948)

⁴ [Bill analysis](#) for Assembly Third Reading of AB 1466 (McCarty, et al.) As Amended April 5, 2021

2. Bring the completed (unsigned) form to a notary for signing and notarization. The property owner must make a copy of their deed and include a copy of the specific verbiage that they want redacted.
3. Deliver the signed and notarized Restrictive Covenant Modification form and the copy of their deed to the Marin County Recorder's Office in San Rafael. The Recorder will refer the document to Marin County Counsel staff for approval prior to recording. After approval by County Counsel, the document will be recorded for no fee and returned to the submitter within a few weeks.

In 2020, the community of Muir Beach worked together to begin the process of removing racist language from property deeds. They identified more than 80 deeds that contained terms prohibiting owners from selling their property to anyone "except those of the caucasian [white] race."

An alternative or additional option is to add a covenant to existing deeds with language that acknowledges the racist clause, repudiates the unlawful clause and states instead that neighbors of all races and ethnicities are welcomed with enthusiasm. Richard Rothstein in The Color of Law⁵ suggests adding language to deeds rather than removing language from deeds. In that way, the former language stands as a reminder to not let history repeat itself. His suggested verbiage:

We, [your name], owners of the property at [your address], acknowledge that this deed includes an unenforceable, unlawful, and morally repugnant clause excluding [races, ethnicities] from this neighborhood. We repudiate this clause and are ashamed for our country that many once considered it acceptable, and state that we welcome with enthusiasm and without reservation neighbors of all races and ethnicities.

The County of Marin is starting a program to map areas that have been subject to racially restrictive covenants and to inform property owners of the Restrictive Covenant Modification document. The Marin County Community Development agency will certify racially restrictive language is illegal and inconsistent with County values. Town property owners may submit copies of their documents to ldarby@marincounty.org or by mail.

[AB 1466 \(2021-2022\)](#) is moving through the State legislature and could prevent buyers from seeing offensive language in deeds and CC&Rs. AB 1466 would require the title company to search records to identify objectionable covenants and, if one is found, to record an RCM with the county recorder. Other similar bills have been put forward in the past but have not been signed into law. "In the intervening years, however, our continuing failures to achieve racial justice have become painfully obvious, and new social movements such as Black Lives Matter have pushed issues of racial equity into the forefront of our national consciousness, all suggesting that the bill may fare better this time around."⁶

⁵ Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. First edition. New York; London: Liveright Publishing Corporation, a division of W.W. Norton & Company, 2017.

⁶ Ibid. Page 3

FISCAL IMPACT

No fiscal impact.

CONSISTENCY WITH GENERAL PLAN

Promoting this program is consistent with the *General Plan Housing Element* Program H1.C “Publicize Fair Housing Laws and Respond to Discrimination Complaints.”

CEQA AND CONSISTENCY WITH CLIMATE ACTION PLAN 2030

This would not be considered a “project” under the California Environmental Quality Act and would not conflict with goals in the Climate Action Plan.

Respectfully submitted,



Elise Semonian
Planning Director

Attachment 1 – Restrictive Covenant Modification Form
Attachment 2 – California Government Code Section 12956.2

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

RESTRICTIVE COVENANT MODIFICATION

I (We) _____ have an ownership interest of record in the property located at _____ that is covered by the document described below.

The following referenced document contains a restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income (as defined in subdivision (p) of Section 12955 of the Government Code), or ancestry that violates federal fair housing law and that restriction is void.

Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of eliminating a restrictive covenant as shown on page(s) _____ of the document recorded on _____ (date) in book _____ and page _____, or as instrument number _____ of the Official Records of the County of Marin. Attached hereto is a complete copy of the original document containing the unlawfully restrictive language with the unlawful language stricken through.

This modification document shall be indexed in the same manner as the original document pursuant to Government Code Section 12956.2(c).

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

Date: _____

Date: _____

(Signature)

Printed Name:

(Signature)

Printed Name:

[NOTARY ACKNOWLEDGMENT REQUIRED

Approved:
Marin County Counsel

Date: _____

By:
Deputy County Counsel

State of California

GOVERNMENT CODE

Section 12956.2

12956.2. (a) A person who holds an ownership interest of record in property that the person believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may record a document titled Restrictive Covenant Modification. The county recorder may choose to waive the fee prescribed for recording and indexing instruments pursuant to Section 27361 in the case of the modification document provided for in this section. The modification document shall include a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive language stricken.

(b) Before recording the modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether the original document contains an unlawful restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents and inform the county recorder of its determination. The county recorder shall refuse to record the modification document if the county counsel finds that the original document does not contain an unlawful restriction as specified in this paragraph.

(c) The modification document shall be indexed in the same manner as the original document being modified. It shall contain a recording reference to the original document in the form of a book and page or instrument number, and date of the recording.

(d) Subject to covenants, conditions, and restrictions that were recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the Restrictive Covenant Modification, the restrictions in the Restrictive Covenant Modification, once recorded, are the only restrictions having effect on the property. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(e) The county recorder shall make available to the public Restrictive Covenant Modification forms.

(f) If the holder of an ownership interest of record in property causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the holder of the ownership interest of record who caused the modified recordation.

(g) This section does not apply to persons holding an ownership interest in property that is part of a common interest development as defined in Section 4100 or 6534 of the Civil Code if the board of directors of that common interest development is subject to the requirements of subdivision (b) of Section 4225 or of subdivision (b) of Section 6606 of the Civil Code.

(Amended by Stats. 2019, Ch. 601, Sec. 10. (SB 222) Effective January 1, 2020.)