



Takoma Park City Council Meeting – September 25, 2024 Agenda Item 4

Work Session

Options for Addressing Unlawful Restrictive Covenants

Recommended Council Action

Review City Attorney memos and staff summary below and provide guidance on next steps

Context with Key Issues

On September 27, 2023, the City Council received a presentation from Montgomery County's Historic Preservation office (the "Office") sharing their research for the Mapping Segregation Project. This research and project was part of a multi-phase effort to use interactive mapping tools and historical documents "to determine which neighborhoods were constructed with, or later adopted, racial restrictive covenants" in order to expand understanding of historic and present demographic and cultural shifts in these areas. The presentation focused specifically on details learned about Takoma Park's specific history of racial segregation. Attached for your recollection and reference is that presentation.

As part of the presentation, the Office highlighted areas of the City where racial restrictive covenants existed, and, key to Council's present inquiry, outlined the process in Maryland law whereby homeowners and other interested parties may "modify" historic, and, since the 1950's, unconstitutional restrictive covenants from the land records. In practical terms, this process allows property owners and other limited interested parties to submit a form with attachments to the County Clerk's office. Upon County Attorney review for legal sufficiency, the clerk will record a copy of the original deed restrictions, usually created during original subdivision and development of the property, with the unconstitutional racial restrictive covenant language "stuck through." This "stuck through" version of the original covenants are recorded in the land records as the most recently recorded document in that property's chain-of-title.

Maryland law § 3-112 allows homeowners, nonprofit entities such as homeowners' associations whose responsibility it would have been to enforce the restrictive covenants, or counties and municipalities, to initiate the racial restrictive covenant "modification" process. In order to pursue potential City-lead efforts for large-scale City-wide modifications to the land records, staff, Mayor, and Councilmembers, have since worked with the City Attorney and the committed volunteer efforts of Historic Takoma to better understand a scope of work under the requirements of the Maryland law. In the past year, Historic Takoma has conducted a substantial amount of background research which has identified approximately 1,200 parcels within Takoma Park that were once subject to unlawful restricted covenants. Of these 1,200 parcels, there are likely approximately 20-30 underlying covenants from original subdivisions and development.

Option 1: City lead City wide Land Record Modifications Pursuant to Maryland Law § 3-112

Under Maryland Code § 3-112(2)(i)(2), to initiate a modification to the land records for any property within its boundaries that was once subject to an unlawful racial restrictive covenant, the City must first provide written notice of its intent to “all persons with an ownership interest in the property.” To comply with this requirement, the City would likely need to first determine who/what has an ownership interest for each of the 1,200 properties identified by Historic Takoma as once having an unlawful racial restrictive covenant and gather information on the formal address for each of those individuals.¹ This correspondence would need to be sent via mail to each of those interests, and after thirty (30) days, the City could then proceed with filing the modified deeds and intake sheet with the County Clerk.

In order to ensure the City is successfully identifying all ownership interests for each of the 1,200 subject properties, it is recommended that a title search be conducted and a professional legal opinion provided on whether property interests identified in the chain-of-title would be considered “ownership interests”. Optimistically, a title search, identifying legal addresses, mailing and tracking notice letters, and filing modified deeds with intake sheets, would take at least an hour per property. Based on current staff capacity and expertise, staff would recommend that such an effort occur through the release of an RFP and conducted by a professional title company. As a liberal estimate, assuming this work would be done at \$100/hour, total project costs could be as high as \$120,000. There are many options for budgeting this expense as a priority in a future budget year. If Council wishes to pursue this option, staff recommends spreading this cost over several fiscal years.

Option 2: Adoption of Point-of-Sale Regulations

An alternative to a City lead initiative to modify unlawful restrictive covenants is the adoption of an ordinance requiring modification when property is transferred. The law would mandate that property owners utilize the process for homeowners that already exists in the current legislation.

This option can be imminently pursued by the City Council, would require no additional capital resources to implement beyond what already exists in the City’s budget, and would minimize the City’s project management and oversight requirements.

The challenge to implementing the point-of-sale option is that the City would have no means of monitoring or enforcing the City law. City land records are managed by the Montgomery County Land Records Department and the City has no authority or involvement in processing property transfers. As a result, the City does not possess a means of identifying transactions that must comply or reviewing deeds to ensure compliance. Time and impact are also important elements to consider when contemplating the point-of-sale option. Because the modification of the covenant is directly tied to the transfer of property, it will likely take several decades for the majority of the unlawful covenants to be modified.

¹ Please reference the City Attorney’s three council-only attorney/client memorandum for additional information.

To implement this option in a manner that would be meaningful and allow for the appropriate level of monitoring and enforcement, the City Council would need to work with its District 20 State Legislators and the City's legislative advocate to pursue an amendment to the existing legislation that would require land records agencies to ensure compliance with sub-jurisdictional laws that mandate point of sale removal of unlawful restrictive covenants.

Option 3: Council Statement, Education, and Legislative Advocacy

The Montgomery County Planning Office, in their identification of racially restrictive covenants in Takoma Park, determined that there are entire subdivisions for which covenants were applied. When the subdivisions were later sold as parcels to individual owners, they incorporated the covenants by reference into the first conveyance in the chain of title. All subsequent deeds conveying title would also be subject to the same unlawful covenant by reference.

As stated earlier, according to the comprehensive work done by Historic Takoma to identify the number of parcels that contain unlawful covenants, there are more than 1,000. By contrast, the subdivisions that include the majority of these parcels are far fewer, perhaps less than two dozen.

One possible alternative to individually addressing parcels would be a more global approach that nullifies the initial covenant and thus any reference to the covenants in subsequent deeds. This approach would require new state legislation, but has several advantages including a faster and more efficient and cost-effective process that does not rely on individual homeowners.

While pursuing the new legislation, the City Council may also take immediate actions to educate residents of Takoma Park's unfavorable and systemically-prejudiced past and inform residents of how to resolve the unlawful covenants through the existing process. City resources can be dedicated to marketing the process and providing training to residents.

In an effort to acknowledge the City's complicated past and chart a path forward, the City Council may also consider issuing a statement to the public addressing the matter, highlighting the illegality of the restrictive covenants and reassuring the public of the City's commitment to racial and socio-economic equity.

Council Priorities

Advancing a Community of Belonging; Engaged, Responsive, Service-Oriented Government; Community Development for an Improved and Equitable Quality of Life.

Environmental Considerations

N/A.

Fiscal Considerations

The FY25 budget does not currently contain funds or staff capacity to pursue costs associated with this project.

Racial Equity Considerations

A deeper understanding of the City's role in racial segregation and a fuller picture of the people, community, and activism attached to those actions are important pieces of the story of Takoma Park.

Elevating these buried stories allows City leadership, staff, and residents to more holistically approach efforts to improve racial equity within the City, and this project directly supports the City Council's racial equity initiative. Findings from the research conducted through this project will have impacts in the way that the City allocates various future capital and programmatic resources.

Attachments and Links

[September 27, 2023 Presentation to Council of initial findings of the Montgomery Planning's Historic Preservation Office Mapping Segregation Project \(PDF\)](#)