

WHITEFISH COMMUNITY HOUSING COMMITTEE AGENDA



Monday, September 25, 2023, at 4:00 p.m.
City Hall – City Council Conference Room

1. Call to order.
2. Communications from the public.
3. Approval of minutes from the August 28th meeting.
4. Continue to review light deed restriction drafts with Angie (ownership and rental).
5. Discuss canceling or rescheduling December meeting since the 4th Monday falls on Christmas Day
6. Review current Committee membership and possibly recommend to the City Council that the Whitefish Community Housing Committee be created as a standing committee
7. Other items not on the agenda.
8. Next committee meeting.
 - a. Monday, October 23rd at 4:00 p.m.
9. Adjourn.

Committee Documents:

Click [here](#) to access the Whitefish Community Housing Roadmap

Click [here](#) to access the 2022 Whitefish Area Community Housing Needs Assessment

Click [here](#) to access the Workforce Housing Needs Assessment

Click [here](#) to access the 2017 Whitefish Strategic Housing Plan

WHITEFISH COMMUNITY HOUSING COMMITTEE AGENDA

Monday, August 28, 2023, at 4:00 p.m. City Hall – City Council Conference Room

1. Call to Order

The meeting was called to order at 4:00 p.m. by Ben Davis

Present: Ben Davis, Cameron Blake, Rhonda Fitzpatrick, Leanne Galanz, Daniel Sidder, Carolyn Pittman

Staff: Dana Smith, City Manager; Wendy Compton-Ring, Senior Planner; Luke Sponable, Housing Planner, Angie Jacobs, City Attorney

Others: none

2. Communications from the public.

a. None

3. Approval of minutes from the July 24 meeting.

Rhonda, Ben, seconded, all in favor - approved.

4. Update on the resort tax re-allocation plan.

Dana – Council approved. The city is neutral and can only provide facts. Housing Whitefish will take the lead.

Daniel – Friends of Community Housing has been formed with the State of Montana – it is just for this one ballot issue. Shared poster. Yard signs on the way. Website friendsofcommunityhousing.com Chamber, Shelter WF, FFRG all helping.

This is the only city ballot issue.

Planned - letters to editor and event presence.

Leanne – how do we talk about – lack of trust by voters?

Daniel – lots of groups coming together – everything is on the website.

5. Review light deed restriction drafts (ownership and rental).

Dana – already some decisions from previous meeting. Big question is who are we serving?

Angie – philosophical questions – who? How do we not exclude people who want to be part of the community? Do we angle toward workforce housing? (Avon, Co, Summit County, CO, Big Sky) 32 hours a week or 75% of income from local.) What about disabled or retired? (could be qualified if had worked in Whitefish). Workforce easier to administer.

Can't force them to sell? Rentals easier – alternate unit designated by owner/landlord if go above income limits.

Dana – Annual reporting? (South Lake Tahoe and Big Sky) What if take new job in Kalispell? At least one person in household must be working for a business in Whitefish? Need to qualify, but we don't want to displace.

Leanne – need stability in housing for mental health. Really a tri city area for work.

Angie – rental could be rollover so if one moves to a job in another city next unit goes to Whitefish worker.

Carolyn – goal to have those working here living here.

Rhonda – Lets pick a philosophy. Housing for the Workforce, then deal with exceptions.

Ben – Genesis of where came from was to stabilize second home percentage in town 2017 – targeted goal was 60%.

Rhonda – But the situation has changed.

Cameron – do we decide percentage – 80%

Daniel – could this be used in other situations like Vail Indeed?

Dana – that could include income. This is annexation only.

Dana – Big Sky “good deeds” – giving consideration for deed restriction – we are not. (utilities)

Angie – as far as percentage goes, we must be cognizant of and walk a fine line vis a vis State statute and legislature. 2021 took away the right to require income restrictions (price control) or affordable housing on housing for annexation. The legislature could take away.

Dana – so workforce and 30 hours or 32 hours. 75% of income from business in Whitefish?

Angie – others use voter registration, affidavit, paystub

Do we want to limit – ie has net worth but working 30 hours to meet income restriction.

Maybe keep simple and just use hours.

Daniel – how many annexations?

Mostly to the south

Rhonda – Council decided annexations should be mostly residential.

Angie – only annexations by petition

Daniel – size limit – when does this apply. what if infill and a house or two?

What about programs like Indeed – buy deed restriction to rent to local.

Ben – consultants have felt most of new housing will be through annexation.

Leanne – what about short term rental ban like Bozeman?

Cameron – we already have zoned for short term rentals.

Wendy – explained that we already have areas zoned for short term rentals and illegal everywhere else. Versus Bozeman and other cities where the entire City allows. It is permitted to use – short term.

Dana/Angie – Whitefish being sued by landowner on Lake that we can't limit to zoned. If they won, would open up short term rentals in every City. Need to see how that plays out. They are arguing the landlord tenant act applies. It will likely be a three-year process.

Ben – back to annexation.

Dana – do we start at 20% deed restricted similar to Legacy home – Can we use original program as a template?

Ben - Owner occupancy or local workforce? Local workforce is more restrictive. Different as workforce percentage needs to be lower or developers won't build.

Rhonda – community doesn't want more empty houses.

Carolyn – how to differentiate between say Creekwood and Alta Views.

Ben - may not see an Alta View if limit second homeowners.

Development agreement versus deed restriction.

Angie - DA goes with land. DA is an agreement by developer that goes through council where commit to general site plan, limiting density, amenities. Similar to deed restriction.

Allows approval to be based upon what will actually be built – goes clear through Council in public process.

Angie – upcoming proposal – developer proposed.

Could we use this (DA) instead?

Dana – still need some standard/direction - Parcels over one acre? No existing homes on it?

Daniel and Leanne left so no quorum from here forward

Wendy – is this what Bozeman and Missoula require on big annexations?

Angie – they have it as a condition of connecting to City services.

Ben – likes the idea of some percentage owner occupied and some percentage workforce.

Dana – Trail view decided deed restriction at building permit.

Angie – Trailview – preference for 59937 buyer, if can't fill can go outside.

Ben if we go in this direction? would we need three (standard) documents?

Angie – still need agreements – stock language that can be tweaked. Develop agreement at annexation, then deed restrictions later with rental different than ownership.

Dana - Angie do a new draft based upon what we have so far for committee to review next time.

70% owner occupied and then what about workforce housing?

Cameron – if being annexed not zoned? – is that what allows developer agreement? What about 382?

Dana/Angie 382 – Zoning is spelled out ahead for growth. The council can still deny annexation, and developments if don't meet needs of community. No more CUP's. Decide ahead what is permitted or not allowed.

Rhonda – community will want more restrictive zoning in place.

Ben – need to establish what we have agreed upon.

Dana - Can't do more at this meeting. Angie can redraft based upon what we decided last meeting. Has heard 30 hours for workforce. 70% for primary residents and then 20% for workforce. Specific units or?

Angie – doesn't like identifying – more fluid if flexible. If owner occupancy –? 3 years but then can lease to qualifying resident. Look to Eagle county.

Cameron – how does work in market – second home allowed more \$?

Rental restrictions on owned rented as rental units?

Year lease required? How to shut down short term rentals.

Ben – this is complicated – how to establish direction. Should we go to Council first for direction.

Angie - work session with council to get input before getting too far.

Dana – need to give the council a recommendation. This is an appointed committee so should have a recommendation and then the council can say if on track.

Ben – Owner occupancy – 70% - that has been direction. Workforce – look at what is needed. Establish correct percentage – small number like 10%.

Wendy – Legacy 20% but originally was 10%.

Discussion on what to bring to Council.

Dana – needs to be a recommendation.

Ben – one pager with bullet points and definitions.

Dana thinks that workforce can be part of owner occupied – ie 20% (workforce) of 70% (owner occupied)

Cameron – how detailed? Bedrooms versus units.

Dana – management will be through admin policy especially for rentals. Units will be in developer agreement – 1 BR, 2BR.

Ben – next step staff draft bullet points.

Dana – she and Angie will draft.

Carolyn - What if no renters/buyers.

Ben – after a period of time - goes to open market. Should be in key bullet points. Also, should the statement of purpose.

6. Other items not on the agenda. (no quorum)

7. Next committee meeting. Monday, September 25th at 4:00 p.m.

8. Adjourned at 5:25

When Recorded Return to:
City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

DEED RESTRICTIONS

This Deed Restriction is entered into this _____ day of _____, 20____, between _____ ("the Owner"), the City of Whitefish ("the City), and the Whitefish Housing Authority ("WHA").

This Deed Restriction applies to the real property ("the Property") commonly known as _____ the legal description of which follows:

[Legal Description]

RECITALS

WHEREAS, the Property was annexed by the City by petition pursuant § 7-2-4601 through § 7-2-4625, MCA; and

WHEREAS, the Owner has benefitted from such annexation through the provision of City services; and

WHEREAS, as a condition of the Owner benefitting from annexation through the provision of City services, the City required the Property to be sold to and owned by a Qualified Household; and

WHEREAS, subsequent residents will benefit from the limitations required by this Deed Restriction; and

WHEREAS, the intent of the City and the Owner is to secure and preserve housing for individuals or households who are, or desire to be, full-time residents of the City and to assign to the City and/or the WHA the right to enforce compliance with this Deed Restriction.

Commented [AJ1]: See Comment directly below.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency which is hereby acknowledged, the parties agree as follows:

DEFINITIONS

The following terms shall have the meanings defined herein:

A. "Owner" means a Qualified Household.

B. "Qualified Household" means an individual who has committed to being a full-time resident of Whitefish or a household with at least one member who has committed to being a full-time resident of Whitefish.

COVENANTS

1. **Deed Restrictions to Run with Property.** The Property is hereby burdened with the covenants delineated herein, which covenants must be a burden upon, and run with, the Property for the benefit of the City, the WHA, their successors and assigns, who may enforce the covenants and compel compliance therewith. Lack of compelled compliance at any time, for any duration, or for any reason does not remove the right of the City, the WHA, their successors and assigns, from enforcing the covenants and compelling compliance.

2. Restrictions on Occupancy.

2.1 **Residential Use Only.** The Owner must use, and must cause all occupants to use, the Property only for residential purposes and any incidental activities related to residential use that are permitted by the applicable zoning.

2.2 **Occupancy.** The Owner must occupy the Property as the Owner's primary residence unless the Owner is renting the Property as set forth in Section 9.2. The Owner will be considered as occupying the Property as his/her/their primary residence if the Owner is living in the Property for at least ten (10) months out of each calendar year.

2.3 **Maintenance and Inspection of Property.** The Owner must maintain the Property and any improvements thereon in good condition and repair throughout the Owner's period of ownership. If the WHA receives a report of poor maintenance or unsafe condition, the Owner must allow the WHA, or its designee, access to the Property upon 48 hours' notice. The WHA, or its designee, will inspect the property and notify Owner if repairs or corrections are required. The Owner must make any required repairs or corrections in a reasonable manner acceptable to WHA within thirty (30) days of being notified. In addition, upon the WHA's receipt of a Notice of Intent, as detailed in section 6, the WHA must be given the right to enter and inspect the Property. The Owner is obligated to make repairs to the Property deemed necessary by the WHA prior to sale. If Owner is unable to make the required repairs, the WHA may enter into an agreement with the Owner to make necessary repairs.

Commented [AJ2]: This is the definition we came up with on the ADU deed restriction with the WHA (Lori). The intent was to (1) not limit eligibility to individuals already living in WF because the inability to do so is the problem we are trying to solve; and (2) allow individuals who want to be part of our community to do so, even if they are confined to working somewhere else. Other options include a true "workforce" housing deed restriction requiring one member of the household to work in Whitefish a certain number of hours a week (i.e. Summit County is 30). Downside is it excludes the disabled and the retired, but maybe that's not a problem. Upside is that it is much easier to administer.

Commented [AJ3]: The Committee should discuss long-term rentals. Do we want owner to be able to rent to Qualified Households? I would think so.

Commented [AJ4]: The Committee may want to discuss this provision. It was the former City Manager's preference, but I always thought it was rather heavy handed to dictate how the owner of a property maintains it.

3. Taxes and Assessments.

3.1 Owner Responsibility. The Owner is responsible for the payment of all taxes, governmental assessments, and homeowners' dues/assessments relating to the Property.

3.2 Right to Contest. The Owner has, at the Owner's own expense, the right to contest the amount or validity of any taxes or assessments relating to the Property.

4. **Term.** This Deed Restriction must continue in full force and effect for a period of ninety (90) years after the date of recordation. With each sale or transfer, the Owner must ensure that the purchaser or transferee executes this Deed Restriction and records them with the Flathead County Clerk and Recorder. Said ninety (90) year period must start over with each resale, should resale occur within ninety (90) years of the previous sale.

5. Sale of the Property.

5.1 Requirements. The Owner may, subject to the Purchase Option set forth in section 7, sell the Property if all the following conditions are met:

i. The Owner must deliver a written notice of its intent to sell the Property to the WHA.

ii. No later than ten (10) days after delivering notice to the WHA, WHA, or designee, will inspect the property and notify the Owner of required repairs. The Owner must make required repairs within thirty (30) days. If Owner is unable to make the required repairs, the WHA may cause the repairs to be made and charge one and one-half (1.5) times the repair costs to the Owner payable out of purchase proceeds at closing.

iii. To proceed to the closing of the sale of the Property, the WHA must certify in writing that the prospective buyer is a Qualified Household.

5.2 Selling the Property. The Owner may sell the Property by selling the Property directly to a Qualified Household located through the WHA or by any other method. The Owner is ultimately responsible for selling the Property, including any real estate commissions and Administration Fee.

5.3 Administration Fee. At closing on the sale of the Property, the Owner (Seller) shall pay to the City or its designated beneficiary an administration fee of one percent (1.0%) of the sale price to defray the actual costs of facilitating the real estate transaction. This provision only applies to all subsequent purchases after initial sale.

6. **Option to Purchase.** To further the purpose of preserving the Property for Qualified Households, upon receiving a Notice of Intent, the WHA or the City, or their successors, must have the right and option to purchase the Property for the sale price. Such option may be exercised by delivery to the Owner of a written Notice of Intent to Purchase

Commented [AJ5]: See comment in Section 6 below.

Commented [AJ6]: See comment in Section 2.3 above.

Commented [AJ7]: See comment directly below.

Commented [AJ8]: Again a preference of the former City Manager the Committee will have to discuss. I struggle with how the City or WHA is helping "facilitate" the transaction other than making sure the property is being sold to a local or wannabe local.

within thirty (30) days of the WHA's receipt of the Notice of Intent. Unless extended by mutual agreement of the Owner and the purchasing party, the purchase must be completed within ninety (90) days of delivery of the Notice of Intent to Purchase or the Owner may sell the Property as set forth in section 6. The City or the WHA may assign its purchase option.

Commented [AJ9]: Not sure this makes sense in a light deed restriction.

7. Prohibited Sale/Transfer.

7.1 Effect. Any prohibited sale/transfer of the Property in violation of this Deed Restriction or an attempt to make a prohibited sale/transfer is void, is a material breach, and must be subject to exercise by the City and WHA of their option to purchase or to have an assignee purchase the Property as set forth in section 7.

7.2 Sales/Transfers Not Prohibited. The following are not considered prohibited sales/transfers: (i) Transfer of title by gift, devise, or inheritance to the Owner's spouse or natural or adopted children; (ii) Transfer of title due to the Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property; (iii) transfer to a spouse as part of divorce or dissolution proceedings; (iv) transfer of title by the Owner into an inter-vivos trust in which the Owner is the beneficiary; or (v) transfer of title or an interest in the Property to the spouse in conjunction with marriage. However, for these not to be deemed prohibited sales/transfers all of the following three conditions must be met: (i) at the time of the sale/transfer, the Property was the transferee's primary place of residence, as set forth in Section 3.2, and will continue to be the transferee's primary place of residence, or transferee meets the definition of an Qualified Household and will make the Property his/her primary place of residence; (ii) this Deed Restriction must continue to run with title of the Property following said sale/transfer; and (iii) transferee must execute and record this Deed Restriction. A transferee who satisfies the above three conditions shall then be considered the Owner.

8. Rental of the Property.

8.1 Short-Term Rentals Prohibited: The Owner is prohibited from renting the Property or any room or rooms in the Property to any person or person for term shorter than 30 days.

8.2 Long-term Rentals: The Owner may rent the Property or any room or rooms in the Property to any Qualified Household for a term longer than 30 days.

9. Breach.

9.1 Notice and Cure. Upon violation of any of the provisions of this Deed Restriction, either the City or the WHA must give written notice to the Owner by certified mail, return receipt requested, specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City or WHA within a reasonable period of time, not to exceed thirty (30) days after the date the notice is mailed, or within further time as is determined to be necessary to correct the violation, the City or the WHA may declare a default.

9.2 Remedies Upon Default. Upon the declaration of a default, the City or the WHA may invoke any remedies available to them under this Deed Restriction including, but not limited to, seeking a court order for specific performance of the obligations of this Deed Restriction, for an injunction prohibiting a proposed sale/transfer in violation of this Deed Restriction, for a declaration that a sale/transfer in violation of this Deed Restriction is void, or for any other such relief at law or equity as may be appropriate.

9.3 Attorney fees and costs. In the event of a default by the Owner, the Owner and/or the Owner's transferee must hold the City and the WHA, their officials, employees, and agents harmless and reimburse the expenses, attorney fees, and costs for any action the City or the WHA take to enforce the provisions of this Deed Restriction.

10. Foreclosure.

10.1 Effect. In the event of foreclosure, acceptance of deed-in-lieu of foreclosure, or any similar action, this Deed Restriction shall remain in full force and effect.

10.2 Notice. The Owner must deliver to the WHA a foreclosure notice or any similar document he/she/they receive from a mortgagee within five (5) days of receipt.

10.3 Option to Purchase. Within sixty (60) days after receipt of notice, the City and/or the WHA may, but are not obligated to, make any payment required to avoid foreclosure. Upon making such payment, the City and/or the WHA may place a lien on the Property in the amount paid to cure the default and avoid the default and avoid foreclosure, including all fees and costs. The Owner shall execute all documents required to make such lien legally effective.

11. Liability, Insurance, Damage, Destruction, and Improvements.

11.1 Owner's Liability. The Owner has sole responsibility and liability to all persons and authorities related to the Owner's possession, occupancy, and use of the Property and must hold the City and the WHA harmless from any and all claims of liability for injury or damage to person or property from any cause, on or about the Property.

11.2 Insurance. The Owner is responsible for procuring and maintaining appropriate and adequate insurance on the Property.

11.3 Damage to the Property. In the event of fire or other damage to the Property, the Owner must take all necessary steps to ensure the repair of such damage and the restoration of the Property to its condition immediately prior to the damage. All such repairs and restoration must be completed as promptly as possible. Provided, however: If the Owner, using reasonable judgment and relying on professional estimates, determines that either: (i) full repair and restoration of the Property and improvements is physically impossible; or (ii) insurance proceeds will pay for less than eighty percent (80%) of the cost of repair and restoration, then the Owner may elect not to repair or restore the Property.

11.4 Eminent Domain. If the Property is taken by reason of eminent domain or other action of public authority prior to expiration of this Deed Restriction and:

i. The Property is either taken in entirety or to such extent that the Property is lost or damaged beyond repair, this Deed Restriction must terminate as of the date the Owner is required to give up possession of the Property.

ii. The taking of the Property results in damage to the Property only to such an extent that the Property can reasonably be restored to a residential use consistent with this Deed Restriction, the Owner must utilize such of the monetary compensation as is needed to repair or restoration of the Property.

iii. Any and all proceedings brought by a party in connection with any damages as a result of any taking referred to in this section 12.4 must be conducted at the sole expense of such party. If any provision of law requires that such proceedings be brought by or in the name of the Owner, the Owner must join in the proceedings or permit the same to be brought in the Owner's name. Each party agrees to do all acts and execute all documents that may be required to enable the other to maintain such proceedings. If the party required to join in the proceedings incurs any cost or expense in doing so, such party must be entitled to reasonable reimbursement and this entitlement must constitute a first charge against any monetary compensation for the taking.

12. General Provisions.

12.1 Notice. Any notice required or permitted under this Deed Restriction must be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, at the address set forth below, or such other address designated by the written notice. All notices must be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

If to WHA: Whitefish Housing Authority
100 East 4th Street
Whitefish MT 59937

If to City: The City of Whitefish
Attn:
P.O. Box 158
Whitefish, MT 59937

If to Owner:

12.2 Severability. Whenever possible, each provision of this Deed Restriction and any other related document must be interpreted in such manner as to be valid under applicable law. However, if any provision must be invalid or prohibited under said applicable law, such provisions must be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

12.3 Choice of Law and Venue. This Deed Restriction must be interpreted in accordance with and governed by the laws of the State of Montana. Venue for any legal action arising from this Deed Restriction must be in Flathead County, Montana.

12.4 Waiver. Waiver by the City and/or the WHA of any term or condition of this Deed Restriction, or the failure of the City and/or the WHA to take action with respect to any breach of any such term or condition, must not be deemed to be a waiver of such term or condition with regard to any subsequent breach of such term or condition, or of any other term or condition of the Deed Restriction. The City and/or the WHA may grant waivers in the terms of this Deed Restriction, but such waivers must be in writing and signed by the City and/or the WHA before becoming effective.

12.5 Successors. The provisions and covenants contained herein must inure to the benefit of, and be binding upon, successors and assigns of the parties.

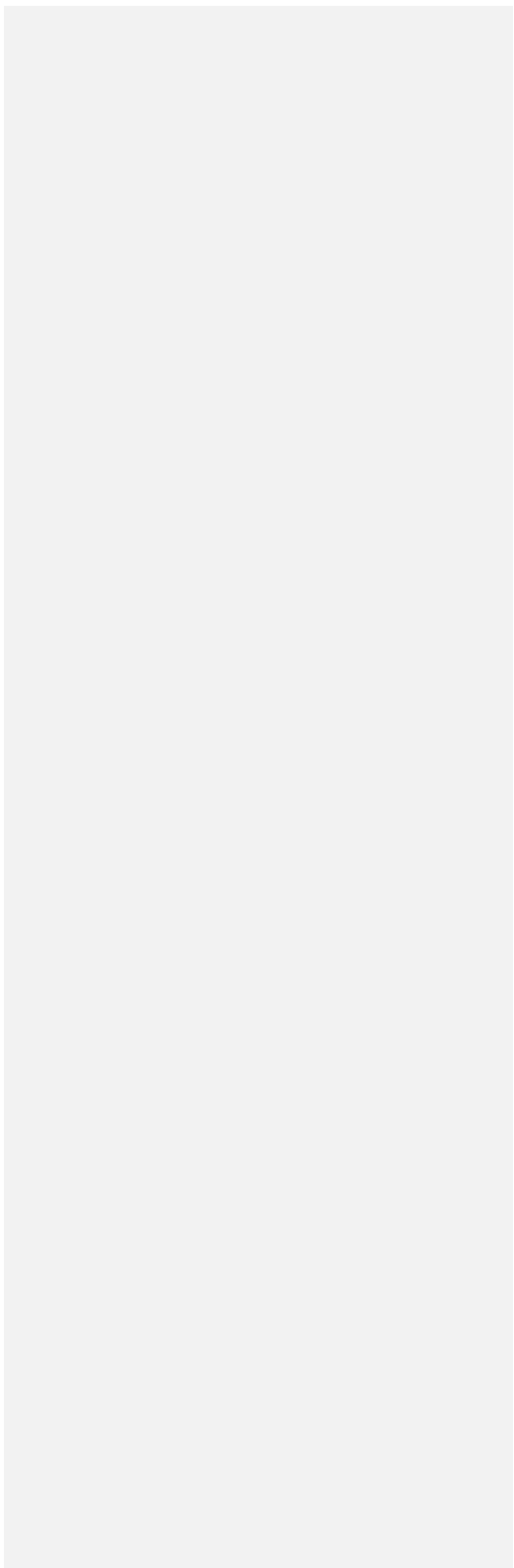
12.6 Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Deed Restriction, including each and every representation, certification and warranty contained herein.

12.7 Further Actions. The parties agree to execute such further documents and take such further actions as may be deemed reasonably necessary to carry out the provisions and intent of this Deed Restriction or any agreement or document relating hereto or entered into in connection herewith.

12.8 Amendment. This Deed Restriction may not be amended unless in writing, signed by all parties, and recorded with the Flathead County Clerk and Recorder.

12.9 Conflicts. To the extent any Covenants, Conditions and Restrictions, bylaws, or any other limitations or restrictions placed upon the Property by a builder, developer, or homeowner's association conflicts with any provisions of this Deed Restriction or the Guidelines, the applicable provision of this Deed Restriction shall prevail.

12.10 FHA Loans. If the Property is encumbered by a mortgage insured by the Federal Housing Authority, the provisions of 24 C.F.R. 203.41 prevail to the extent such provisions conflict with any provisions of this Deed Restriction.



Return to:
City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

RENTAL HOUSING DEED RESTRICTIONS

This Rental Housing Deed Restriction (“Deed Restriction”) is entered into this ___ day of _____, 202__, between _____ (“the Owner”), the City of Whitefish (“the City”), and the Whitefish Housing Authority (“the WHA”).

This Deed Restriction applies to the real property (“the Property”) commonly known as _____ the legal description of which follows:

[Legal Description]

RECITALS

WHEREAS, the Property was annexed by the City by petition pursuant § 7-2-4601 through § 7-2-4625, MCA; and

WHEREAS, the Owner has benefitted from such annexation through the provision of City services; and

WHEREAS, as a condition of the Owner benefitting from annexation through the provision of City services, the City required a certain number of units be maintained for rental by individuals or households who are, or desire to be, full-time residents of the City; and

WHEREAS, subsequent residents will benefit from the rent limitations required by this Covenant; and

WHEREAS, the intent of the City and the Owner is to secure and preserve rental housing for individuals or households who are, or desire to be, full-time residents of the City and to assign to the City and/or the WHA the right to enforce compliance with this Deed Restriction.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency which is hereby acknowledged, the parties agree as follows:

Commented [AJ1]: See Comment directly below.

COVENANTS

1. Number of Units. The Owner agrees it will provide and manage ____ rental units for Qualified Tenants on the Property. "Qualified Tenant" means an individual who has committed to being a full-time resident of Whitefish or a household with at least one member who has committed to being a full-time resident of Whitefish.

Commented [AJ2]: This is the definition we came up with in conjunction with the WHA (Lori) in the ADU deed restriction. The intent was to (1) not limit eligibility to individuals already living in WF because the inability to do so is the problem we are trying to solve; and (2) allow individuals who want to be part of our community to do so, even if they are confined to working somewhere else. Other options include a true "workforce" housing deed restriction requiring one member of the household to work in Whitefish a certain number of hours a week (i.e. Summit County is 30). Downside is it excludes the disabled and the retired, but maybe that's not a problem. Upside it's easier to administer.

2. Location, Configuration and Size of the Rental Units. The type and size of the rental units on the Property shall be as follows:

<u>Unit Type</u>	<u>No. of (sq ft)</u>	<u>No. of Bedrooms</u>	<u>No. of Bathrooms</u>
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The rental units required by this Deed Restriction must have substantially the same equipment and amenities as all other units on the Property. The rental units required by this Deed Restriction must have equal access to enjoyment of all common facilities of the Property as all other units. The location of the rental units required by this Deed Restriction may change in accordance with Paragraph 5.

Commented [AJ3]: I'm not certain we need this. It was more to prohibit the Owner from building sub-par units for affordable units.

3. Certification and Marketing. In accordance with its internal policies and procedures, and applicable state and federal requirements, the WHA will screen potential tenants. The Owner is responsible for all other marketing for the rental units required by this Deed Restriction and for screening and selecting tenants based upon desirability, background and creditworthiness. Nothing herein shall be construed to constitute a representation or guarantee that a Qualified Tenant will be located or that the Owner will be able to rent or lease any rental unit required by this Deed Restriction and neither the WHA nor the City shall be liable if a Qualified Tenant is not located and/or the Owner is unable to rent or lease a rental unit required by this Deed Restriction.

4. Administrative Fee. In order to compensate the WHA for its services performed under this Deed Restriction, the Owner or its property manager shall pay the WHA ____% of the total rents collected from the rental unit required by this Deed Restriction. The Owner or its property manager shall remit the administrative fee to the WHA semi-annually by January 15th of each year for the periods of July through December and by July 15th of each year for the periods of January through June.

5. Annual Recertification. The WHA will perform recertification on each tenant's "anniversary date" (one year from the date of initial certification). If a tenant ceases to meet the definition of "Qualified Tenant," after he/she/it becomes an occupant of one of the rental units required by this Deed Restriction, the Owner must follow the "next available unit rule." This means the next available unit must be rented to a Qualified Tenant.

5. Transfer. The Owner shall inform the City, in writing or via e-mail, thirty days prior to any anticipated transfer of interest in the Property. The Owner shall not transfer its interest in the Property without the express written agreement of the City that the City's housing

interest in the Property will not be jeopardized by such transfer. The new Owner must execute and record a Deed Restriction substantially similar to this Deed Restriction.

6. Foreclosure. The Owner agrees that he/she/it will give immediate notice to the City of a foreclosure notice or any similar documents he/she/they receive from a mortgagee within five (5) days of receipt.

7. Enforcement. The Owner shall exercise reasonable diligence to comply with the requirements of this Deed Restriction and shall correct any noncompliance within sixty (60) days after such noncompliance is first discovered by the Owner or within sixty (60) days after the City or the WHA gives the Owner written notice of noncompliance. If such noncompliance remains uncured after such period, the Owner is in default and the City and/or the WHA may take any one or more of the following steps:

- a. By any suit, action or proceeding at law or in equity, require the Owner to perform its obligations under this Deed Restriction, or enjoin any acts or things which may be unlawful or in violation of this Deed Restriction, it being recognized that the City and/or the WHA cannot be adequately compensated by monetary damages in the event of the Owner's default;
- b. Have immediate access to and inspect, examine and make copies of all books and records of the Owner pertaining to the Property; and
- c. Take other such action at law or in equity as may appear necessary or desirable to enforce this Deed Restriction.
- d. In the event the City and/or WHA files a suit, action or proceeding to enforce the terms of this Deed Restriction, the prevailing party shall be entitled to its attorney fees and costs.

8. Indemnification. The Owner shall defend, indemnify and save harmless the City and the WHA from and against all losses, claims, suits, judgments or liabilities which may be asserted against the City and the WHA arising from or caused by the Owner, the Owner's employees or agents in the negligent performance of this Deed Restriction or any sole negligent or intentional act or omission by the Owner, the Owner's employees or agents. As part of such indemnification obligation the Owner shall pay all costs and attorney's fees incurred by the City and the WHA as a result of such claims or suits. The time of attorneys and legal assistants in the Whitefish City Attorney's Office spent on any such claims or suits shall be paid for in accordance with the prevailing attorney's fees charged in Flathead County for similar services.

9. Maintenance. The Owner shall maintain the rental units required by this Deed Restriction in good, safe and habitable condition, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the Property. The Owner shall maintain and upgrade the rental units required by this Deed Restriction to the same standard and with the same processes and procedures as all other units. The City and the WHA shall have the right, but not

the obligation, to inspect the rental units required by this Deed Restriction prior to initial occupancy and periodically thereafter, upon three business days' notice to the Owner and without unreasonable disruption to the Owner's operations.

Commented [AJ4]: See Comment in Section 2 above.

10. Reporting. The Owner shall comply with any and all annual reporting requirements of the City, the WHA, or any of their assigns or successors.

11. Records. The Owner shall maintain:

- a. Any documentation reasonably required to demonstrate its performance under this Deed Restriction.
- b. Complete records on applicants and tenants sufficient to comply with federal and state fair housing requirements and laws.
- c. The Owner must allow access to its records at any time during normal business hours by the City or the WHA.

12. Lease Provisions. Leases between the Owner and tenants of the rental units required by this Deed Restriction must be for not less than one year. The Owner is responsible for: (1) screening and selecting tenants for desirability, background and creditworthiness; and (2) ensuring that lease/rental agreements do not contain any provision prohibited by federal, state or local law. Lease agreements for rental units required by this Deed Restriction must contain substantially the same terms as the lease agreements for all other units. The City and the WHA have no obligation or duty to enforce the terms of any lease/rental agreement nor does it have any liability for the Owner's or any third-party property manager's enforcement of such terms or failure to enforce such terms.

Commented [AJ5]: Is this appropriate?

13. Owner's Obligations. All property management functions and obligations pertaining to the rental units required by this Deed Restriction are the responsibility of the Owner. The Owner may enter into a property management agreement with a third-party in its discretion at its own expense. All property management agreements covering the Property shall include a provision stating that they are subject to the terms of this Deed Restriction and that, in the event of a conflict, the terms of this Deed Restriction control with respect to the rental units required by this Deed Restriction.

14. Termination of Leases. The Owner or its designee shall have the right to terminate the tenancy or refuse to renew the lease of a Qualified Tenant pursuant to the provisions of the lease/rental agreement. The Owner and its designee shall comply in all aspects with the Montana Residential Landlord and Tenant Act, §§ 70-24-101, *et seq.*, MCA. Neither the City nor the WHA shall be liable in the event the Owner terminates the tenancy or refuses to renew the lease of a Qualified Tenant or in the event the Owner fails to comply with the Montana Residential Landlord and Tenant Act or other applicable laws or regulations.

15. Conversion to Non-Rental Use. In the event the Property is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Owner must

submit to the City for its approval a plan for preserving the rental units required by this Deed Restriction.

16. No Discrimination. The Owner shall not discriminate on the basis of race, creed, religion, color, sex, sexual orientation, age, national origin, marital status, or presence of any mental or physical disability as set forth by applicant federal, state and local laws in the lease, use or occupancy of the Property or in connection with the employment or application for employment of persons for the operation and management of the Property.

17. Compliance with Law. The Owner shall apply with all applicable laws and regulations of the City, State and Federal governments.

18. Perpetual Covenant. This Deed Restriction shall be perpetual, shall run with the land and in favor of the City, and shall be recorded in the real property records of the Clerk and Recorder of Flathead County.

19. Partial Invalidity. If any provision of this Deed Restriction shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

20. No Agency. Nothing in the Deed Restriction shall be deemed to create an agency, partnership, joint venture or employment relationship between the City and the Owner.

21. Waiver. The waiver by any party of any breach or violation of any term or condition of this Deed Restriction or of any provisions, ordinance or law shall not be deemed to be a waiver of such term, condition, ordinance or law.

22. Merger. This Deed Restriction constitutes the entire agreement of the parties relating to the subject matter addressed in this Deed Restriction. This Deed Restriction supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Deed Restriction, whether oral or written.

23. Modification. This Deed Restriction may be supplemented, amended, or modified only by the mutual written agreement of the parties. No supplement, amendment, or modification of this Deed Restriction shall be binding unless it is in writing and signed by all parties.

24. Choice of Law and Venue. This Deed Restriction shall be governed by the laws of Montana and venue shall be in Flathead County, Montana.

RESOLUTION NO. 23-02

A Resolution of the City Council of the City of Whitefish, Montana, establishing the Whitefish Community Housing Committee.

WHEREAS, in 2017, the Whitefish City Council adopted the Whitefish Strategic Housing Plan which created a step-by-step approach for addressing the housing needs identified in the 2016 Whitefish Area Housing Needs Assessment; and

WHEREAS, Resolution No. 17-50, established the Whitefish Strategic Housing Plan Steering Committee recommended by the Whitefish Strategic Housing Plan; and

WHEREAS, on November 21, 2022, at a lawfully notice public hearing, the Whitefish City Council adopted the Whitefish Community Housing Roadmap, based on the 2022 Whitefish Area Housing Needs Assessment, which represents the next step evolution and plan update of the 2017 Whitefish Strategic Housing Plan; and

WHEREAS, the Whitefish Community Housing Roadmap calls for a reconfiguration of the Whitefish Strategic Housing Plan Steering Committee to advise the Whitefish City Council on actions listed in the Roadmap that are the responsibility of the City; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to establish the Whitefish Community Housing Committee.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: There is hereby established the Whitefish Community Housing Committee.

Section 2: Members of the Committee shall be appointed by the Mayor and ratified by a simple majority of the City Council in attendance at a special or regular session. Committee members shall receive no compensation.

Section 3: The specific purpose of the Committee will be to make recommendations to the City Council to implement the housing strategies that are the responsibility of the City, to liaison with the Housing Coordinator, and to report to City Council. The Committee shall keep decisions and discussions within the confines of City Council directives.

Section 4: The Committee will consist of nine members with representation as follows: the Mayor or one member of the City Council; one representative of the Whitefish Housing Authority; one representative of Housing Whitefish; one representative of the Whitefish Chamber of Commerce; one representative of the Whitefish Convention and Visitors Bureau; one member of the public with relevant professional or personal expertise in real estate development; one member of the public with relevant professional or personal expertise in fundraising or financing; and two members of the public with relevant professional or personal expertise in housing policy, property management, housing programs, end-users of community

housing programs, or housing advocacy. A majority of the Committee members shall constitute a quorum. The Committee shall meet as often as necessary to accomplish its general purpose, as described above, but at least quarterly. The Committee shall cease to exist as provided in Section 5.

Section 5: The Committee will begin its deliberations as soon as practical after its creation and will automatically disband at the end of 2023.

Section 6: A member of the Committee may be removed by the City Council, after a hearing for misconduct or nonperformance of duty. Absences from three (3) consecutive meetings, including regular and special work sessions, or absences from more than fifty percent (50%) of such meetings held during the calendar year shall constitute grounds for removal. The circumstances of the absences shall be considered by the City Council prior to removal. Any person who knows in advance of his or her inability to attend a specific meeting shall notify the Chairperson of the Committee at least twenty-four (24) hours prior to any scheduled meeting.

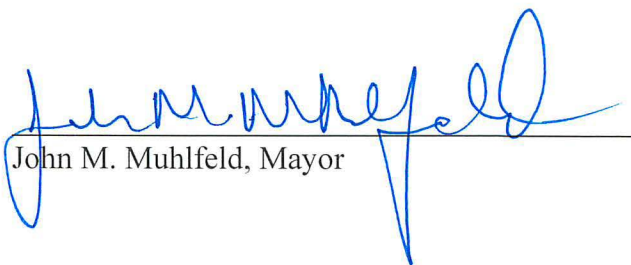
Section 7: Any vacancy occurring on the Committee will be filled in the same manner that the initial position was filled.

Section 8: The Committee will not have authority to make any expenditure on behalf of the City or disburse any funds provided by the City or to obligate the City for any funds.

Section 9: The Committee will have no authority to direct City staff with respect to any matter but may request information and assistance from City staff.

Section 10: This Resolution will take effect immediately upon its adoption by the City Council and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 3RD DAY OF JANUARY 2023.


John M. Muhlfeld, Mayor

ATTEST:


Michelle Howke, City Clerk