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4 **A RESOLUTION**

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6 Repudiating the history of discriminatory covenants in Milwaukee County and the United  
7 States

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10 WHEREAS, in the history of the United States and Milwaukee County, racism  
11 and discrimination has taken many *de jure* forms, including slavery, Jim Crow laws,  
12 racial zoning, redlining, and racially restrictive covenants; and

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14 WHEREAS, Section 1 of the Fourteenth Amendment to the United States  
15 Constitution states, "All persons born or naturalized in the United States, and subject to  
16 the jurisdiction thereof, are citizens of the United States and of the State wherein they  
17 reside. No State shall make or enforce any law which shall abridge the privileges or  
18 immunities of citizens of the United States; nor shall any State deprive any person life,  
19 liberty, or property, without due process of law; nor deny to any person within its  
20 jurisdiction the equal protection of the laws."; and

21  
22 WHEREAS, in 1917 the United States Supreme Court declared municipal  
23 segregation ordinances illegal in *Buchanan v. Warley*, declaring municipally imposed  
24 segregation ordinances as violating the freedom of contract of individual right to  
25 property; and

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27 WHEREAS, *de jure* segregation continued to be legally enforced through  
28 discriminatory or racially restrictive covenants in property deeds, or language in a  
29 property deed restricting real estate transfer of the property to "White or Caucasian" or  
30 specifically regulating against transfer to those of "Negro," "Mongolian," "African," or  
31 "Hebrew," descent, were a way to circumvent contemporary legal precedent as property  
32 transactions were contracts between private individuals; and

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34 WHEREAS, in 1926 the Supreme Court ruled discriminatory covenants as  
35 beyond the reach of the Equal Protection Clause of the 14<sup>th</sup> Amendment in *Corrigan v.*  
36 *Buckley* as property transactions were contracts between private individuals; and

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38 WHEREAS, the Homeowners Loan Corporation (HOLC) and the Federal  
39 Housing Administration (FHA), created pursuant to the National Housing Act of 1934,  
40 enforced discriminatory practices such as the HOLC's nationwide redlining maps and

41 the FHS recommending in its manual the imposition of discriminatory covenants;  
42 leading to American lenders adopting discrimination as standard practice; and

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44 WHEREAS, a 1938 HOLC map of Milwaukee referred to neighborhoods having a  
45 “detrimental influence” of “Polish” residents, “infiltration of Mexicans,” and “Negro slum  
46 residents and lower-type Jews”; and

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48 WHEREAS, a racially restrictive covenant in the Village of Whitefish Bay Bay  
49 Ridge Subdivision, recorded on May 29, 1927 (Vol. 1221, p. 215) states, “No lot or  
50 building thereon, if any, shall be occupied or conveyed to a colored person”; and

51

52 WHEREAS, a 1979 Milwaukee Metropolitan Integration Research Center study  
53 titled, “Racially Restrictive Covenants: The Making of All-White Suburbs in Milwaukee  
54 County,” found 16 of Milwaukee County’s 18 suburbs had racially restrictive covenants  
55 in their property deeds; and

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57 WHEREAS, according to the University of Wisconsin – Milwaukee’s Mapping  
58 Racism and Resistance in Milwaukee County project, an estimated approximation of  
59 two percent, or 20,000 to 25,000 of Milwaukee County’s property deeds, have racially  
60 restrictive racist language; and

61

62 WHEREAS, in 1948 the United States Supreme Court reversed itself and ruled in  
63 *Shelley v. Kraemer* that racially restrictive covenants were no longer legally enforceable  
64 through the courts under the Fourteenth Amendment’s Equal Protection Clause, but the  
65 Federal Housing Administration and other federal and state entities publicly vowed to  
66 ignore the ruling; and

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68 WHEREAS, Congress passed and President Lyndon Johnson signed the federal  
69 Fair Housing Act of 1968 which finally prohibited discrimination in housing transactions  
70 relating to race, color, national origin, religion, sex, et cetera, and further prohibited the  
71 new creation or enforcement of discriminatory covenants; and

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73 WHEREAS, Richard Rothstein’s 2017 *The Color of Law: A Forgotten History of*  
74 *How Our Government Segregated America*, devotes an entire chapter to discriminatory  
75 covenants in the United States titled, “Private Agreements, Government Enforcement”;  
76 and

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78 WHEREAS, Joe Trotter’s *Black Milwaukee: The Making of an Industrial*  
79 *Proletariat, 1915-1945* discusses Milwaukee’s early Black history and Patrick Jones’  
80 *The Selma of the North: Civil Rights Insurgency in Milwaukee* focuses on the open  
81 housing movement involving Vel Phillips, Lloyd Barbee, and Father James Groppi; and

82 WHEREAS, throughout the period of *de jure* and *de facto* implementation of  
83 discriminatory covenants, aside from the real pain and injustice of unequal treatment,  
84 there was significant economic harm against Blacks due to a segmented market: as  
85 there was a reduced housing supply available to Blacks, it often resulted in poorer  
86 quality apartments and houses at inflated rents and real estate prices; as Patrick Jones  
87 wrote in *Selma of the North*, “The realtors would. . .encourage the white homeowners to  
88 sell their homes at a loss because, they suggested, the presence of African Americans  
89 would bring down property values. These newly available ‘white properties’ were then  
90 sold to African American families over the market value” (p.177).; and

91

92 WHEREAS, among County actions to address open housing, in File No. 67-  
93 745(b), Milwaukee County requested the Community Relations-Social Development  
94 Commission in Milwaukee County recommend a model county-wide fair housing  
95 ordinance; and

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97 WHEREAS, Milwaukee County in 1968 passed a resolution with a draft fair  
98 housing ordinance in File No. 67-829 which, subject to municipal enablement, offered to  
99 have the 19 municipalities cede their fair housing enforcement via civil litigation to the  
100 Milwaukee County Office of Corporation Counsel; however, no further action was  
101 apparently taken and no County ordinance was created at that time; and

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103 WHEREAS, the current State of Wisconsin fair housing statute as amended, was  
104 originally created in 1971 and is presently Wis. Stat. § 106.50; and

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106 WHEREAS, Milwaukee County in File No. 92-346 created a Fair Housing  
107 Ordinance in Chapter 107 of the Milwaukee County Code of General Ordinances  
108 (MCGO) to have “the declared policy of the County of Milwaukee that all persons shall  
109 have an equal opportunity for housing regardless of sex, race, color, handicap, religion,  
110 national origin, sex or marital status of the person maintaining a household, lawful  
111 source of income, age, ancestry or sexual orientation. . .”, including in Section 107.03(1)  
112 MCGO which states it is illegal discriminatory conduct, “By refusing to sell, lease,  
113 finance or contract to construct housing or by refusing to discuss the terms thereof.”;  
114 however, legal County jurisdiction is limited to unincorporated territory, of which there is  
115 none; and

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117 WHEREAS, property owners may contact the Register of Deeds to amend their  
118 property deeds to eliminate racist language, however, there may be merit in maintaining  
119 the language in existing deeds to remind property owners of past racism; and

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121 WHEREAS, discriminatory covenants are a dark spot on the history of the United  
122 States, including in Milwaukee County, whereby founding American principles and

123 Enlightenment values of individual liberty and equal justice for all were not lived up to;  
124 and,

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126 WHEREAS, the Committee on Health Equity, Human Needs, and Strategic  
127 Planning, at its meeting of June 17, 2022, recommended adoption of File No. 22-703  
128 (vote 4-0); now, therefore,

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130 BE IT RESOLVED, Milwaukee County hereby acknowledges and recognizes the  
131 harm discriminatory covenants caused to society and how it adversely affected  
132 individuals' rights to purchase property solely on the color of their skin, ethnicity, or  
133 religion; and

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135 BE IT FURTHER RESOLVED, Milwaukee County hereby recognizes and urges  
136 all Milwaukee County residents to recognize that discriminatory covenants are  
137 unenforceable, morally repugnant, against public policy and applicable law, and have no  
138 legal force or effect; and

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140 BE IT FURTHER RESOLVED, Milwaukee County hereby repudiates every  
141 discriminatory covenant contained in any deed, plat map, subdivision governing  
142 agreement, subdivision association bylaws, and any other real estate documents  
143 contained in any Milwaukee County property.

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146 06/17/22

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