

Combating Restrictive Covenants: Breaking Down Neighbourhood Barriers to Accessing Healthy Food

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Issue:

The majority of Albertans rely on supermarkets for the bulk of their food shopping (1) and this setting is a key source of healthy foods for Alberta consumers. A nutritious diet is recognized as an important protective factor in preventing obesity, some cancers, and other chronic diseases (2-4). Unfortunately, a lack of access to supermarkets is a barrier to healthy eating in some Alberta neighbourhoods. Research suggests that the built environment can influence behaviour, limiting healthy dietary choices for residents in communities without readily available access to nutritious food retailers (within 1000 meters) (5). Negative health consequences, such as obesity, unhealthy weights, and hypertension are more prevalent among residents living in neighbourhoods without a supermarket (6). Over the years, supermarkets have increased in size, with newer and larger stores developing mainly in suburban areas, while there have been closures of older and smaller stores in mature neighbourhoods (7-9). A 2010 study in Edmonton found evidence of eighteen restrictive covenants imposed on former supermarket sites, with many located in mature neighbourhoods (7). A separate study documented sixteen covenants on abandoned supermarkets in Vancouver, British Columbia (10).

Restrictive covenants are private agreements registered by land title upon the sale of the old supermarket site to a new owner (11). The covenants limit the amount of food that can be sold on the site, often to convenience store volume (7). Grocery chains create these legal restrictions to protect their network from competitors re-opening stores on their former sites. While this strategy is important for retailers, it can be emotionally and practically demoralizing for communities with high-need or lower socio-economic status residents (12). Unless an expiry date is specified in the covenant, these can continue indefinitely, even upon subsequent sale of the property. In October 2013, corresponding with the purchase of Safeway Inc. by Sobeys Inc. and Empire Company Limited, the Canadian Competition Bureau requested the sale of 23 retail grocery stores, including eleven in Alberta (four of those being located in Edmonton) (13).

Presence of restricted covenants in certain areas has the potential to diminish local access to healthy foods. As mature neighbourhoods are already fully built up, it is challenging for new retailers to find an alternate site for a supermarket, or even a medium-sized grocery store. Six of the eighteen covenanted former supermarket sites in the 2010 Edmonton study were considered to have a potentially serious impact on neighbourhoods with no other operating supermarket within walking distance of the former sites (7). The study also found that reduced access to nearby healthy food may impact the diet of local residents, particularly vulnerable groups such as seniors, as well as individuals with low-incomes and lack of access to affordable transportation. Further research has found that inadequate access to nutritious foods due to far distance from important amenities is linked to promoting diets that lack appropriate nutritional quality for healthy functioning (5). Yet, only preliminary action has been taken to regulate supermarket restrictive covenants in Alberta.

Benefits to Taking Action:

Removal of barriers to the entry of new food retailers in covenanted neighbourhoods could assist in:

- Improving access to healthy food sources for residents, particularly individuals lacking means of mobility and/or income;
- Adding opportunities for physical activity and social interactions with more local, walkable services;
- Increasing the neighbourhood retail vitality and supporting other local retailers and activities;
- Generating additional employment opportunities;
- Raising higher tax revenues from retail activity.

Considerations:

Covenants can be removed or modified with the permission of those who originally filed or supported the agreements (14), but this is rarely in their interest. Covenants can also be challenged if they contravene municipal official plans or

land use bylaws (14). However, this is difficult in practice, as municipal land zoning is permissive with the general retail category allowing for a range of businesses including supermarkets. As covenants are registered provincially, they could also be controlled through Alberta Government Legislation.

The City of Edmonton Council was briefed on the issue of restrictive covenants in 2008 and concluded that legislative changes would have to be made by the province (7). In July of 2012, the City of Edmonton Executive Committee reviewed a report exploring non-legal options, such as supporting local businesses, as a strategy to address the issue of restricted covenants in Edmonton (15). More recently, in September 2013, the former city councillor and current Mayor of Edmonton, Don Iveson, proposed a motion, unanimously supported by Edmonton City Council and the Edmonton Federation of Community Leagues. The motion asked then-mayor to request the Canadian Competition Bureau to consider the following in the proposed purchase of Safeway Inc. by Sobeys Inc. and Empire Company Limited (16):

1. "Limiting the transfer of existing Restrictive Covenants held by Safeway Inc. that limit opportunities for competition from future grocery and/or pharmacy retail on sites subject to such covenants; and
2. further, that existing covenants be struck or time-limited in the short term, and that any future restrictive covenants be discouraged or, at the very least, time-limited to no more than 5 years."

The motion was presented to the Canadian Competition Bureau, but was not passed (17). In May 2014, the City of Edmonton Executive Committee reviewed the 'Acquisition and Divestiture of Edmonton Canada Safeway Locations – Existing Restrictive Covenants' Administration report, which recommended that municipalities require the support of other levels of government to address restrictive covenants and their applications (17).

APCCP Priorities for Action:

- Support policy initiatives to address the issue of restrictive covenants at municipal and provincial levels.
- Support time-limited restrictive covenants that reduce access to healthy foods in Alberta neighbourhoods.

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