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## Memorandum

**To:** Alders Ramirez-Rosa, La Spata, Sigcho-Lopez, Fuentes, Cruz, Cardona, & Rodriguez-Sanchez  
**From:** Adriann Murawski, Illinois REALTORS® & Chicago Association of REALTORS®  
**Subject:** Amending the Northwest Side Housing Preservation Ordinance

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### BACKGROUND

On behalf of over 17,000 REALTOR® Members within the City of Chicago, we appreciate the opportunity to meet with you and discuss our amendments to the Northwest Side Housing Preservation Ordinance. While REALTORS® oppose this ordinance, reasonable amendments will still allow you to achieve your intended goals. In this memorandum, we highlight (1) recommendations to delay the effective date and institute a sunset provision and (2) suggestions on what market behaviors the Department of Housing (DOH) should study during the pilot period.

### DELAYING THE EFFECTIVE DATE

**Implementation & Owner Notification:** As the proposed amendments point out, allowing the Tenant Opportunity to Purchase Ordinance (TOPO) to take effect “upon passage and publication” deprived the Department of Housing (DOH) of time to adopt rules and forms to implement the program, and notify affected property owners. The ‘Grace Period’ instituted is insufficient, and the lack of notice unfairly places affected property owners at risk of unknowingly violating TOPO and incurring penalties of up to \$1,000 per day. To remedy this, we suggest an amended effective date of April 1, 2025.

**Contractual Interference and Forced Delays:** TOPO applies retroactively to properties listed for sale prior to the effective date, even if said properties were already under contract when the ordinance took effect. Because it would require additional procedural steps before a transaction can close, it may have the effect of delaying the closing date or otherwise interfering with the terms of the purchase and sale contract, upsetting the expectations of the private parties and potentially exposing the City to claims based on the Contracts Clause of the US Constitution, which states that “[n]o State shall ... pass any ... Law impairing the Obligation of Contracts.”<sup>1</sup> The current effective date would force owners that are ready to list their property now to delay the listing until after the required 60-day or 30-day notice of intent period has ended (or run the risk of being fined up to \$1,000/day for violating the ordinance).<sup>2</sup>

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<sup>1</sup> U.S. Const. art. I, § 10, cl. 1.

<sup>2</sup> See Figure 1 “Timeline”



## INSTITUTING A SUNSET PROVISION

At the conclusion of a pilot program, the report should provide the legislative body with the information it needs to determine whether the pilot project met expectations and whether it should be extended, amended, made permanent, or terminated.<sup>3</sup> We suggest instituting a sunset provision on TOPO through 2027, as there is currently no conclusion date to TOPO. Studying its effects through the end of 2027 is both reasonable and adequate. As a compromise, if data is being collected to inform the future of the ‘demolition surcharge’ provision, we do not recommend amending its existing sunset date in 2029.

## ANALYZING MARKET BEHAVIORS – DEPARTMENT OF HOUSING

A pilot program is typically a temporary program which includes data collection, evaluation, and reporting. On that note, there are specific market effects and unintended consequences we recommend DOH collect data on, evaluate, and report at the conclusion of TOPO in 2027:

1. **Tenant Exploitation of TOPO Rights, and Third Party Assignment.** In 2018, Washington, D.C. amended its Tenant Opportunity to Purchase Act (TOPA) to exclude single-family dwellings from the TOPA sale requirements.<sup>4</sup> This exemption was largely driven by reports that single-family landlords were being “blackmailed” by tenants who demanded large sums of money to release their TOPA rights before the owner could sell the property.<sup>5</sup> This problem arose in cases where an owner needed to make a quick sale (e.g., for financial reasons or to relocate for employment), but was prevented from doing so by a tenant who had no intent to purchase the property, but threatened to exercise their TOPA rights for as long as possible as leverage. Chicago’s TOPO raises the same concern by including all residential rental properties, including single-family homes.

In addition, Section 5-11-080 permits a tenant or association to assign their TOPO rights to a third party and does not appear to prevent tenants from selling those rights. The lack of constraints on the tenant’s right to assign their TOPO rights invites exploitation by tenants who have no interest in purchasing the unit but seek a financial windfall at the owner’s expense. This is particularly concerning for owners of small rental properties (e.g., properties with 1-4 units) who are most vulnerable to being held hostage by tenants who use their TOPO rights as leverage. If bad actors are reported to DOH, we suggest DOH keep a record and report these actions for City Council’s consideration. We also recommend DOH keep a record and report on how many times these rights are exercised.

2. **Delays Caused by Excessive TOPO Timelines.** Under TOPO, the owner of a rental property with 5 or more units would be subject to the following timelines: (1) a **60-day**

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<sup>3</sup> Comment adapted from “Pilot projects and sunset dates in California legislation,” *Capitol Weekly* (Jan. 8, 2024) (available online at <https://capitolweekly.net/pilot-projects-and-sunset-dates-in-california-legislation/>).

<sup>4</sup> D.C. CODE ANN. § 42-3404.09.

<sup>5</sup> See “What renters and landlords need to know about the new DC TOPA law,” *Washington Post* (May 2, 2018).



Notice of Offer period; (2) a **90-day** period for tenants to form a tenant association, notify the owner, and exercise the right of first refusal; and (3) a **120-day** closing period. Altogether, these timeframes add up to **270 days**.

The owner of a rental property with 4 units or less is subject to (1) a **30-day** Notice of Offer period; (2) a 15-30 day period to exercise the right of first refusal; and (3) a **60-day** closing period. Altogether, these timeframes add up to **120 days**. On average in Chicago, the timeframe from listing date to closing for a single family home was 55 days in Sep. 2024. For 2-flats or condominiums, the timeframe was 52 days, listing to closing. This represents nearly an **70 day increase** in the timeline for owners in the pilot zone. Negative consequences of this delay include increased carrying costs (e.g., operating and maintenance costs, financing), changing market conditions, and a loss of investment income.

**Figure 1. Timeline of TOPO and Associated Delays**

<b>Tenant Purchase</b>				
	5 or more units	4 or fewer	1-2 units	
Notice of intent to sell	60	30	30	
Right of first refusal	90	30	15	
Closing	120	60	60	
<b>Total Days</b>	<b>270</b>	<b>120</b>	<b>105</b>	
<b>3rd Party Purchase</b>				
	5 or more units	4 or fewer	1-2 units	
Notice of intent to sell	60	30	30	
Right of first refusal	90	30	15	
<b>Closing<sup>1</sup></b>	<b>150</b>	<b>60</b>	<b>45</b>	
Required tenant occupancy	180	180	180	
<b>Total Days<sup>2</sup></b>	<b>330</b>	<b>240</b>	<b>225</b>	

1. Additional time if material changes occur with 3rd party contract.  
2. Tenants remain in units for 6 months or when lease expires, whichever is longer

- Negative Impact on the Marketability and Sales Price of Affected Properties.** The uncertainty and transactional delays caused by TOPO will make it more difficult for affected property owners to attract purchasers and reduce equity. Because the ‘right of first refusal’ introduces uncertainty into whether a prospective purchase will ever actually be completed, it will deter prospective buyers from bidding on property in the pilot zone in the first place. A property owner might be able to offset this effect by lowering the initial asking price to induce buyers to bid on the property, but even if successful, this strategy likely would reduce their hard-earned equity.<sup>6</sup> We suggest DOH work with REALTORS® to monitor average sale prices in the pilot zone, compare them to previous prices, and report the differences for City Council’s consideration.

<sup>6</sup> See Peter Damrosch, *Public Rights of First Refusal*, 129 YALE L. J. 812, 845 (2020).