

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

WHEREAS, It is the policy of the City of Chicago to preserve and retain, as a long-term city resource, privately-owned, federally assisted affordable rental housing units for senior citizens and other low- and moderate-income persons and households; and

WHEREAS, Over the past few years, more than 100,000 such units have been lost from our Nation's privately-owned, federally assisted affordable housing stock; and

WHEREAS, Historically, affordable rental housing in the United States was supported by federally subsidized mortgages, project-based rental assistance contracts and use restriction controls. In recent years, however, inadequate funding of the federal affordable housing preservation program, coupled with the restoration in 1996 of prepayment and owner's choice options that enabled building owners to opt out of these programs with relative ease, by prepaying their federally assisted mortgage, or by terminating their federal mortgage insurance, or through non-renewal of their federal subsidy, has significantly reduced the availability of high-quality, affordable rental housing units nationwide and throughout our City; and

WHEREAS, The potential loss of affordable rental housing units puts many of our City's most vulnerable citizens, particularly the elderly and low-income families, who cannot afford to pay market-priced rents, at risk of displacement; and

WHEREAS, It is more cost efficient to preserve existing affordable rental housing than to build new affordable rental housing; and

WHEREAS, Under these circumstances, local initiatives to maintain the availability of existing affordable rental housing, while simultaneously protecting the rights of building owners and tenants, have become more critical than ever; and

WHEREAS, One way to stem the tide in Chicago of the sale of privately-owned, federally assisted rental housing developments at risk for conversion to market rate is to require the owners of these developments to notify the City of Chicago's Department of Housing ("DOH") in advance of the owner's intent to prepay, terminate, sell or otherwise dispose of the development so that DOH can work with the development's tenants and interested not-for-profit organizations to enable the tenants to avail themselves of their legal rights under Illinois' Federally Assisted Housing Preservation Act ("the Act"); to give qualified developers, who are interested in maintaining the long-term affordability of an assisted housing development, a "right of first refusal" in the event that tenants fail to avail themselves of the protections provided by the Act; to authorize DOH to establish and maintain a list of qualified developers; to authorize DOH to make all of this information available to any owner, tenant association, qualified entity, not-for-profit organization or other person interested in preserving affordable housing in Chicago; and to give tenants and tenant associations a private right of action to enforce this

section; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Chapter 2-44 of the Municipal Code of the City of Chicago is hereby amended by inserting a new section 2-44-111, as follows:

2-44-111 Federally assisted housing preservation.

(A) *Title.* This section shall be referred to as the Affordable Housing Preservation Ordinance.

(B) *Definitions.* As used in this section:

“Affordability preservation agreement” means an agreement between the owner and a purchaser (i) in which the purchaser agrees to maintain the development in a manner that preserves the development’s existing affordability restrictions, or (ii) that would qualify the development as affordable housing as defined in the Illinois Affordable Housing Act, and (iii) in which the affordability restrictions set forth in the agreement are memorialized in covenants running with the land, in a form approved by the commissioner, enforceable by the city as a third party beneficiary. The affordability restrictions in each affordability preservation agreement shall extend for a period of not less than ten (10) years from the sale or disposition, subject to such exceptions as the commissioner may provide for by rule or regulation issued hereunder.

“Affordability restrictions” means limits on rents that owners may charge for occupancy of a rental unit in assisted housing and limits on tenant income for persons or families seeking to qualify as tenants in assisted housing.

“Assisted housing” or “assisted housing development” or “development” means a rental housing development, or a mixed use development that includes rental housing, that receives government assistance under any of the following programs:

- (1) New construction, substantial rehabilitation, moderate rehabilitation, property disposition and loan management set-aside programs, or any other program providing project-based rental assistance, under Section 8 of the United States Housing Act of 1937, as amended;
- (2) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act;
- (3) Section 236 of the National Housing Act;
- (4) Section 202 of the National Housing Act;
- (5) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended;
- (6) Programs under Section 514 or 515 of the Housing Act of 1949;
- (7) Section 42 of the Internal Revenue Code.

“Bona fide offer” means an offer evidenced by a purchase contract reflecting a sales price and an earnest money deposit equal to at least 5% of the sales price identified in the purchase contract.

“Commissioner” means the commissioner of housing.

“Department” means the department of housing.

“Federally Assisted Housing Preservation Act” or “Act” or “State Act” means the Federally Assisted Housing Preservation Act, codified at 310 ILCS 60/1, et seq., as amended.

“HUD” means the United States Department of Housing and Urban Development.

“Just cause eviction” means any eviction for serious or repeated violations of the terms and conditions of a lease or occupancy agreement, or for violation of applicable federal, state or local laws or for other good cause.

“Non-qualified entity” means any person or entity that is not a qualified entity.

“Owner(s)” means the person, partnership, corporation, limited liability company or other legal entity that holds title to an assisted housing development.

“Prepay” or “prepay the mortgage” or “prepayment” means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in paragraph (2), (3) or (4) of the definition of “assisted housing” set forth in this subsection, that would have the effect of removing the affordability restrictions applicable to the assisted housing development under the programs described in paragraph (2), (3) or (4) of the definition of “assisted housing” set forth in this subsection.

“Qualified entity” means any person or entity deemed to be a qualified entity by the commissioner pursuant to subsection (I) of this section.

“Substantial deviation” means any substitution of parties to a contingent sales agreement; any change in sales price of greater than 2 percent; any change in the terms of any owner financing; any change in the allocation of escrow or other fees or costs amongst the parties to the agreement; or any other substantive change to the terms of sale that alters the relative financial position of the parties to the agreement.

“Terminate” or “terminate participation in the federal program” or “termination” means:

- (1) the expiration or early termination of an assisted housing development’s participation in a federal subsidy program for assisted housing described in paragraph (1) of the definition of “assisted housing” set forth in this subsection; or
- (2) the expiration or early termination of an assisted housing development’s affordability restrictions described in Section 42(g) of the Internal Revenue Code for assisted housing described in paragraph (7) of the definition of “assisted housing” set forth in this subsection, when that event results in an increase in tenant rents, a change in the form of subsidy from project-based to tenant-based, or a change in the use of the assisted housing development to a use other than rental housing.

(C) *Notification to department—Required when.* If the owner of an assisted housing development intends to prepay the mortgage, or to terminate participation in the federal program or to sell or otherwise dispose of an assisted housing development, such owner shall so notify the department. Such notification shall be given to the department on the same date that the owner provides or is required to provide such notification to all tenants of the development under the Federally Assisted Housing Preservation Act. Provided, however, that if an owner is not

required under Section 8 of the Act to provide notice to tenants of the owner's intent to prepay the mortgage, terminate participation in the federal program or sell or otherwise dispose of the development, the owner shall provide notice to the department in accordance with the requirements of subsection (F) of this section, unless the requirements of subsection (G) apply .

The notice required by this subsection shall be delivered in person or mailed to the commissioner by certified mail, return receipt requested, on a form provided by the department, and shall contain the following information: (1) the name, address and telephone number of each owner of the development; (2) the address of the development; (3) the nature of the subsidy maintaining the affordability of the development; (4) whether the owner is exempt under Section 8 of the Federally Assisted Housing Preservation Act from providing a notice of intent to tenants, and if exempt, the basis for the exemption; (5) a description of the development, including the number of units comprising the development and the number of bedrooms within each unit;

(6) the date on which the owner intends to prepay, terminate, sell or otherwise dispose of the development; (7) a complete and detailed list of all existing affordability restrictions applicable to the development and the units to which these restrictions apply; (8) the development's current rent roll, including each unit number and the monthly rent charged for each unit; (9) the number and location of vacant units in the development; (10) a statement of the development's vacancy rate during the preceding 12 months; (11) a statement of the development's current income and operating expenses; (12) itemized lists of the development's capital expenditures in each of the two preceding calendar years; (13) the amount of project reserves; (14) copies of all financial and physical inspection reports filed with federal, State or local agencies; (15) if the owner intends to sell or otherwise dispose of the development, the owner's asking price for the development; (16) a complete and detailed list of all affordability restrictions, if any, applicable to the planned disposition of the development; and (17) any other information that the commissioner may require.

(D) Unlawful act-Exceptions. If, after an owner notifies or is required to notify under the Federally Assisted Housing Preservation Act the tenants of an assisted housing development of the owner's intent to prepay the mortgage, or to terminate participation in the federal program or to sell or otherwise dispose of the development, the tenants of such development (1) do not exercise their right under the Act to form a tenant association, or (2) fail to provide notice to the owner pursuant to Sections 4 or 6 of the Act, or (3) fail to meet any of the requirements of Section 7 of the Act, then it shall be unlawful for the owner to sell or otherwise dispose of the development to any entity except in conformity with the requirements of subsection (E) of this section. Provided, however, that this prohibition on the sale or disposal of the development to a non-qualified entity shall not apply if the owner enters into an affordability preservation agreement, as defined in subsection (B) of this section, with a non-qualified entity.

(E) Contingent sales agreement-Right of first refusal-Required when. An owner may negotiate with any non-qualified entity that is interested in purchasing an assisted housing development. Provided, however, that any agreement of sale executed between the owner and such non-qualified entity shall be contingent upon the right of first refusal of a qualified entity, unless the owner enters into an affordability preservation agreement, as defined in subsection (B)

of this section, with a non-qualified entity.

The contingent sales agreement required by this subsection shall contain the essential terms of the sale, including, at a minimum, the right of first refusal of a qualified entity; the sales price; the terms of seller financing, if any, including the amount, the interest rate and the amortization rate thereof; the terms of assumable financing, if any, including the amount, the interest rate and the amortization rate thereof; and, if applicable, any proposed improvements to the property to be made by the owner in connection with the sale.

Upon execution of such contingent sales agreement, the owner shall provide the commissioner with a copy of the agreement, which shall be a public record. Upon receipt of the contingent sales agreement, the commissioner shall immediately make a copy of such agreement available to all qualified entities for their review and consideration. Such qualified entities shall have a period of 120 days, measured from the date of receipt by the commissioner of a contingent sales agreement meeting the requirements of this subsection, to make a bona fide offer to the owner to purchase the affordable housing development from the owner on terms that are economically substantially identical to the terms of the contingent sales agreement submitted by the owner pursuant to the requirements of this subsection.

If, within the 120-day period provided for in this subsection, a qualified entity makes a bona fide offer to the owner to purchase the affordable housing development from the owner on terms that are economically substantially identical to the terms of the contingent sales agreement and agrees to close on the sale within 120 days from the date the parties sign the contract to purchase the development, the owner shall sell the affordable housing development to the qualified entity upon those terms. If more than one qualified entity submits an offer to purchase the affordable housing development, the owner shall select from among such offers and shall sell the development pursuant to the terms of the selected offer. The owner shall enter into an affordability preservation agreement with the qualified entity purchasing the affordable housing development. Nothing in this subsection shall be construed to require any owner to extend any form of owner financing to a qualified entity.

If, within the 120-day period provided for in this subsection, a qualified entity fails to make a bona fide offer to purchase the affordable housing development from the owner on terms that are economically substantially identical to the terms of the contingent sales agreement, or fails to agree to close on the sale within 120 days from the date the parties sign the contract to purchase the development, or fails to close on the sale within 120 days, the owner may sell the development to the non-qualified entity identified in the contingent sales agreement submitted by the owner in accordance with the requirements of this subsection. Provided, however, that any substantial deviation in the terms of sale from those set forth in such contingent sales agreement or the failure of the non-qualified entity identified in such contingent sales agreement to close on the sale of the development shall require the owner to resubmit any new terms of sale to the commissioner for distribution to all qualified entities in conformity with the requirements of this subsection.

(F) *Duties of owners exempt from compliance with the State Act.* Except as otherwise provided in subsection (G) of this section, if an owner is not required under Section 8 of the Federally Assisted Housing Preservation Act to provide notice to tenants of the owner's intent to

prepay the mortgage, or to terminate participation in the federal program, or to sell or otherwise dispose of the assisted housing development, such owner shall provide such notice to the department, not less than 12 months before the prepayment, termination, sale or disposal occurs, in conformity with the applicable requirements of subsection (C) of this section. It shall be unlawful for such owner to sell an affordable housing development to any person or entity except in accordance with the requirements of subsection (E) of this section, unless the owner enters into an affordability preservation agreement, as defined in subsection (B) of this section, with a non-qualified entity.

(G) *Exceptions.* Nothing in this section shall be construed to prevent any government taking of an assisted housing development by eminent domain or negotiated purchase, or to prevent any forced sale of a development to an entity not affiliated with the owner pursuant to a foreclosure. Notwithstanding any other provision of this section, the requirements of this section, except the provisions of subsection (C) of this section, shall not apply to any sale or other disposition of assisted housing in a manner pursuant to which the development after the sale or other disposition continues to be assisted housing as defined in subsection (B) of this section.

(H) *Duties of owner relative to existing tenancies.* To the extent allowed by HUD, an owner shall (1) maintain in good standing any available HUD Section 8 contract, executed pursuant to the United States Housing Act of 1937, as amended, during the notice period set forth in subsection (C) of this section and during both of the 120-day periods identified in subsection (E) of this section; and (2) refrain from taking any action, other than notifying HUD of the owner's intention to prepay the mortgage, or to terminate participation in the federal program or to sell or otherwise dispose of the development, that would preclude a qualified entity or other potential purchaser of the development from succeeding to the contract or negotiating with the owner for purchase of the development during the time periods set forth in item (1) of this subsection. No owner shall disturb any tenancy, other than for a just cause eviction, during the time periods set forth in item (1) of this subsection.

(I) *Duties of the commissioner—Qualified entities—Eligibility criteria.* The commissioner shall establish and maintain a list of qualified entities who are interested in and capable of maintaining an assisted housing development in a manner that preserves the development's existing affordability restrictions or qualifies the housing development as affordable housing within the meaning of the Illinois Affordable Housing Act. No entity shall be deemed to be a qualified entity by the commissioner, unless such entity is capable of demonstrating compliance with the following eligibility criteria:

- (1) A history of providing safe and sanitary affordable housing services;
- (2) Sufficient capacity to provide additional affordable housing services in the City, demonstrated through the adequacy of current fiscal and administrative resources;
- (3) A history of encouraging and facilitating resident participation while providing affordable housing services;
- (4) A history of sound fiscal management of affordable housing services; and
- (5) Adoption of, and compliance with, standards of financial accountability that conform to applicable state and/or federal law.

The commissioner shall (i) ensure that all notices and contingent sales agreements received by the department from owners pursuant to the requirements of this section are posted on the City of Chicago website without delay; (ii) periodically notify owners of assisted housing developments of the owner's duties and obligations under this section; and (iii) remove from the list of qualified entities any entity that fails to continue to meet the eligibility criteria set forth in items (1) through (5) of this subsection.

(J) Rules and regulations. The commissioner shall have the authority to promulgate rules and regulations necessary to implement the requirements of this section.

(K) Penalties. Any person who violates this section shall be fined not less than \$200.00 nor more than \$1,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply.

(L) Private right of action. Any aggrieved person including, but not limited to, any tenant or tenant association, may enforce the provisions of this section by means of a civil action in which the court may provide injunctive relief or award treble damages and the plaintiff's court costs and reasonable attorney fees.

(M) Remedies cumulative. The penalties and remedies provided in this section shall be in addition to any other penalty or remedy provided by law.

SECTION 2. Chapter 2-44 of the Municipal Code of the City of Chicago is hereby amended by inserting a new section 2-44-112, as follows:

2-44-112 Condominium conversion of subsidized rental property.

(A) If the owner of a property containing subsidized housing records a declaration pursuant to the requirements of the Condominium Property Act, codified at 765 ILCS 605/1, et seq., as amended, such owner shall so notify the department. Such notification shall be given to the department on the same date that the owner records or is required to record the declaration. The notice required by this section shall be delivered in person or mailed to the commissioner by certified mail, return receipt requested, on a form provided by the department, and shall contain the following information: (1) whether the property owner has notified the tenants of the property identified in the declaration that a declaration has been filed, and, if so, the date the tenants were so notified; (2) the estimated time frame of conversion; (3) whether the owner has a relocation plan for tenants, and, if so, the nature of the plan; and (4) whether federal funds are being used for the conversion, and, if so, the nature of the federal funds, including any affordability restrictions on the use of such funds. Upon receipt of the notice, the commissioner shall immediately make a copy of such notice available to any entity designated as a qualified entity pursuant to section 2-44-111 of this code. Any person who violates this section shall be fined not less than \$200.00 nor more than \$1,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

(B) As used in this section:

“Commissioner” means the commissioner of housing.

“Declaration” means the declaration referred to in the Condominium Property Act.

“Department” means the department of housing.

“Subsidized housing” means any housing or unit of housing subject to a Section 8 contract with the United States Department of Housing and Urban Development entered into pursuant to Section 8 of the United States Housing Act of 1937, as amended.

SECTION 3. This ordinance shall take full force and effect upon its passage and publication.