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Austin city manager office interested in controversial homeowner policy

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With the public focused on a vote to require businesses to pay for sick leave for their employees, City Council on Feb. 15 very quietly asked for a study of an equally controversial tenant rights requirement in Washington, D.C.

Staff for Austin's city manager have begun research into something called the Tenant Opportunity to Purchase Act. The law requires owners of single and multi-family homes in the District of Columbia to give first preference to their tenants should they want to sell their properties.

What the council here in Austin seems to be largely unaware of is the Tenant Act, or TOPA, is in the process of being gutted by a D.C. Council that has seen the legislation become a multi-million dollar "extortion" racket for tenants, according to a staffer for the council member leading the effort to reform TOPA.

"We have a major affordable housing crisis in D.C., as I think you do in Austin," Emmanuel Brantley, a spokesperson for D.C. Councilmember Anita Bonds, told The Texas Monitor. "But in the district, we've had some tenants who were bad actors. We've seen a rise in the level of extortion, to some degree."

Few in Washington have profited as handsomely from the rules of TOPA as attorney Andrew McGuire, who has estimated the market value of tenants' rights of first refusal at \$100 million, although there has been no study confirming that figure.

McGuire, whose hard-sell tactics are among the reasons the D.C. Council has scrambled to revamp TOPA, told The Texas Monitor this week Austin property owners can expect to pay considerably more to close sales if an ordinance along the lines of Washington's is passed.

"This has been completely driven here by the sharp rise in real estate values," McGuire said. "And it's really dominated by middle men. You're going to see that in Austin."

Austin Mayor Pro Tem Kathie Tovo begs to differ with McGuire. Tovo wanted it made clear the City Council passed a resolution asking for a study of the impact of a TOPA-like ordinance on the owners of sub-standard rental properties who have repeatedly been in trouble for city code violations. She estimated that involved 125 properties, compared to the roughly 60,000 rental units in single and multi-family dwellings that could potentially be for sale in the city.

Tovo told The Texas Monitor, however, she remains open to the idea of a city-wide TOPA ordinance as one of the remedies to gentrification and the ever-tightening affordable housing market. In particular, Tovo would like the city to be more creative in assisting tenants to become owners through cooperatives.

“I’m very interested in expanding those ownership possibilities,” Tovo said. “We should really be considering all options. This could be a critical preservation tool for affordable housing.”

TOPA is an artificial, inevitable and wrong-headed remedy for the problems created for Austin, Portland, San Francisco and other cities whose planners have made downtown density the centerpiece of their urban visions, Randal O’Toole told The Texas Monitor.

O’Toole, senior fellow and longtime urban planning analyst for the Cato Institute, said Austin’s urban growth boundaries have resulted in steep rises in property values, taxes and rents. Lower income families are fleeing to more affordable housing in the suburbs, O’Toole said.

“Austin’s affordability problem is its own fault, and until it removes the barriers it has erected to new home construction, it isn’t going to solve the problem by blaming landlords,” O’Toole said. “When I read about ideas like this, I am reminded of H.L. Mencken’s remark that ‘For every complex problem, there is a solution that is simple, clean, and wrong.’”

Inevitably, property owners bear the brunt of these kinds of corrections, O’Toole, who lives in Oregon, said. The Portland City Council last year, passed an ordinance requiring landlords to pay up to \$4,500 for “relocation costs” for tenants when they increase their rents by 10 percent or more.

In radically rent controlled New York City, nearly 250,000 rental units — more than 11 percent of the total in the city — are unoccupied. The New York Daily News recently referred to it as the “Vacant City.” Analysts are surmising property owners are re-purposing many of those units for the largely unregulated Airbnb market.

And then there are the unintended consequences of the Tenant Opportunity to Purchase Act, passed in 1980 in response to an early wave of gentrification in the once crime-ridden and now fashionable D.C. neighborhood of Adams Morgan.

TOPA gives renters the first opportunity to purchase the property they’re living in. And if they can’t afford or have no intention of buying they may also under the law sell their right of first refusal to someone with the wherewithal to complete the purchase.

While property owners weren’t happy paying tenants anything for the privilege of selling their own property, for decades it was common for tenants to get \$500 for their TOPA right, McGuire said.

But over the past few years, with Washington and surrounding counties becoming one of the richest areas of the country, real estate prices were being launched by bidding wars for homes.

McGuire said he recognized TOPA rights were worth much, much more than \$500. He changed his website to topamarket.com to focus exclusively on representing tenants. McGuire said he invested in direct mail and even some door-to-door solicitation of his services.

A [series of stories](#) by an investigative team for the NBC News affiliate in D.C. used terms like “extortion,” “profiteering,” and “TOPA chaser,” to refer to the burgeoning market for first refusal rights.

McGuire says he is nothing more than a tenant advocate. “I’d like them to stand up for their rights.” Helping them stand has worked out well for tenant and attorney. What was once a \$500 value McGuire turned into \$115,000 for one renter in a single family home and \$150,000 for three renters in a four-unit apartment. McGuire said he pocketed a third of the take.

“The I-Team tried to portray me as involved in some sort of skullduggery, but it’s done what I wanted it to,” McGuire said. “I wanted tenants to understand that they’re foolish to sign away their rights for \$500 when they can get \$10,000 or more.”

This sudden use of an old law alarmed Bonds, chairwoman of the District’s [Committee on Housing and Neighborhood Revitalization](#). “We know that this was not the intent of the law and so we have to address it,” Bonds [told I-Team reporters](#) at the time.

Bonds is asking the D.C. Council on April 10 to create an exemption that would free single family homeowners from having to pay anything to tenants unless they are disabled or 62 and over, Brantley said.

The two sides disagree bitterly about the impact of the exemption. Brantley said city staff estimated that fewer than four house sales a year involved TOPA. The Latino Economic Development Center [branded it](#) “the biggest rollback of tenants’ rights in a decade.”

“If you take away single family homes, you’re essentially getting rid of TOPA,” McGuire said.

Tovo said she was aware of some of the recent history of TOPA in D.C., but not aware of the move to scale it back.

When contacted by The Texas Monitor, Kat Harris, a spokeswoman for the Austin Board of REALTORS said no one in the organization was aware the Austin City Council was studying TOPA at all. The Texas Monitor provided the board with the text of the resolution and some [background materials](#).

The council asked city manager staff to return findings for a TOPA plan for repeat violators no later than Aug. 15 and “If the City Manager determines that a “right of first refusal” cooperative policy is viable, the City Manager is directed to evaluate creative financing mechanisms that could be used to assist with “right of first refusal” policies for housing cooperatives,” according to the resolution.

“Right now we aren’t asking staff to develop a TOPA program,” Tovo said. “The study is limited to repeat offenders.”