THE CIVIC FEDERATION

Graduated Real Estate Transfer Tax and Bring Chicago Home Proposal:

Data and Policy Analysis

MARCH 13, 2024

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Introduction

The March 2024 Primary ballot includes a referendum for Chicago voters on the imposition of a graduated real estate transfer tax, known as Bring Chicago Home (BCH). The referendum presents both an opportunity and a risk for Chicago. It is an opportunity to generate a new dedicated revenue stream to address the homelessness crisis in Chicago that at the same time presents the risk of negatively impacting the real estate market, especially for a commercial sector already in distress. Homelessness and a deficit in affordable housing pose urgent challenges to a growing number of people living in Chicago, while directly and indirectly having a destabilizing effect on the City's ability to attract residents and businesses critical to a growth-based future. Bring Chicago Home advances what proponents represent to be a possible solution, but there are a number of questions surrounding the proposal.

Based on the level of information publicly available about the tax and the uses to which it would be applied, the Civic Federation believes there is currently insufficient detail for voters to make a well-informed decision about the impact—positive and negative—that the referendum question poses for the City of Chicago. The Civic Federation aims to fill some of the information and analysis gaps through the research presented in this report. But questions remain about plans for use of the funds that would be generated, the reasons behind the chosen structure of the tax and whether proper accountability measures are in place to ensure effective spending decisions are made. It is the responsibility of the City of Chicago to communicate these answers to the public.

Recent decisions by the Cook County Circuit Court and Illinois Appellate Court have put the status of the ballot question in legal flux. The Circuit Court struck it down and directed that votes cast on the referendum question (which is already printed to the ballots) not be counted. The Illinois Appellate reversed that ruling on the grounds that there is no court jurisdiction for what, according to the Appellate Court, is still in legislative process. The Appellate Court ruling has been appealed to the Supreme Court, but unless the Court rules on the appeal prior to March 19, votes on the referendum question will be counted. If the measure wins a majority of the votes cast, the City Council will need to pass an ordinance to implement the measure. If the referendum question is struck down as unconstitutional, the City could put forward a revised version of the measure on the November 2024 general election ballot. Regardless of the path forward, there is time for the City to produce more public information about BCH and to improve the draft implementation ordinance previously introduced at a City Council meeting in October 2023. The Civic Federation strongly urges the City to do so expeditiously in order for the public to be able to properly evaluate the tax and its proposed uses.

In an effort to understand the potential impact of Bring Chicago Home and the details of the proposal, the Civic Federation conducted an evaluation that included empirical research, communications with representatives from the City of Chicago about financial, operational and implementation questions surrounding the proposal, and an extensive analysis of property transfer data provided by the Illinois Department of Revenue, which was, to the Federation's understanding, substantially similar to the data upon which the City based its revenue projections. The results of this evaluation are presented in this report as follows:

- Policy implementation questions, with answers compiled by Civic Federation staff through communications with City of Chicago staff, the draft Bring Chicago Home implementation ordinance and Federation supplemental research;
- Data analysis and findings; and
- A case study focusing on Los Angeles's recent experience with implementing a graduated real estate transfer tax.

This report is intended as a standalone piece to inform the residents of Chicago about the Bring Chicago Home proposal.[1] After conducting this evaluation, the Civic Federation additionally developed a **position statement** on the graduated real estate transfer tax proposal and the Bring Chicago Home as currently articulated with critiques, concerns and associated recommendations.

POLICY BACKDROP

Homelessness and a lack of housing affordability pose critical challenges for a growing number of people living in Chicago and at the same time destabilize the City's ability to attract residents and businesses. These issues combined constitute the local dimensions of a national social and policy crisis. Bring Chicago Home (BCH) could address some of the difficulties governments face in finding funding for the population of unhoused and at-risk Chicagoans who are not generally eligible for federal support, such as those temporarily staying with others. But the proposal also comes with a significant risk of negatively impacting the real estate market at a time when the wider Chicago and Illinois economy is slowing and businesses already face a higher tax burden than in other states.[2]

The City of Chicago offers several programs through the Department of Family and Support Services, Department of Housing and delegate agencies that provide services and housing placement for people experiencing homelessness and housing instability. These include referrals to shelters and wraparound services for behavioral health, substance abuse and domestic violence, rapid re-housing, rental assistance, and affordable housing programs. However, there is still significant unmet need, as detailed in the DFSS and DOH 2023 Annual Homelessness Report. In January 2023, Chicago had 8,360 permanent supportive housing beds, 2,099 rapid rehousing beds and 310 beds of other permanent housing. Per the Annual Homelessness Report, Chicago needed an additional 2,637 permanent supportive housing slots and 3,851 rapid rehousing slots to meet then-estimated need and anticipated in-flow, not including additional units to support people who are doubled up or living temporarily with others. The Institute for Housing Studies at DePaul University found that the City of Chicago was short nearly 120,000 affordable housing units as of 2021, and the Chicago Housing Authority—a separate unit of government—has 200,000 people on its waiting list. With federal, state and local governments all providing funding and programs and so many contributing factors to a lack of affordable housing, while the newly-required homelessness report from DFSS and DOH provides some context, the City of Chicago

[1] The Civic Federation's January 5, 2024 blog post about the graduated real estate transfer tax proposal is another good source of basic information about the tax, how it would change under the proposal and how it compares to other states.
[2] See Commission on Government Forecasting and Accountability, "State of Illinois Economic Forecast," February 2024.

must do a better job of explaining the universe of homelessness and housing programs it offers, how they fit together and what needs are going unaddressed.

The homelessness crisis is a problem experienced nationwide, and the solution requires addressing a number of complicated barriers including a lack of financing and regulatory complexity.[3] Financial barriers include tightening credit conditions, unfavorable tax policies and the perception of affordable housing as a high-risk investment results in a lack of affordable units. Regulatory barriers include exclusionary zoning restrictions and land use regulations, lengthy permitting and environmental review processes, building codes, fees and charges and other local policies. Locally, barriers to affordable housing supply in the Chicago area are driven by an increased proportion of high-income units, a decrease of low-cost rental units in favor of single-family housing and local/political opposition. Rising costs for new and existing homeowners, including high mortgage rates, property tax increases and housing inflation,[4] make it difficult to find new affordable housing and maintain existing units.[5] Cook County also has an increasing number of older adult homeowners, many of whom are low-income and require substantial accessibility modifications to remain in their homes. Finally, a recent HUD investigation found that the Chicago practice of Aldermanic Prerogative is discriminatory and a mechanism to block affordable housing in wards through unfettered aldermanic veto power.

In addition to expanding access to affordable housing, Bring Chicago Home also intends to serve the chronically unhoused population through Permanent Supportive Housing (PSH), which is affordable housing that offers additional other services to meet residents' social and health needs while promoting housing retention. PSH faces many of the same barriers as affordable housing, such as market and regulatory barriers, local/political opposition and a lack of adequate funding to meet demand. PSH is a multidisciplinary approach involving several systems at all levels of government that are often disconnected from each other, operate under different policy frameworks and regulations and have incompatible data systems. This further complicates development and impedes new PSH construction in cities across the country.

Bring Chicago Home presents a new tax revenue stream to address Chicago's unmet housing needs. The referendum proposes a change to the structure of the existing City of Chicago portion of the real estate transfer tax, a one-time tax paid by the buyer in a property transaction, from a flat rate to a graduated, marginal rate structure. The current rate of $3.75 per $500 in value, or 0.75%, would change to marginal rates applied to the following property values: 0.6% applied to the portion of any property sale valued at under $1 million; 2.0% applied to the portion of any property sale valued between $1 million and $1.5 million; and 3.0% applied to the portion of any property sale valued at over $1.5 million. These rates would be in addition to taxes already

[3] See research by groups including the Bipartisan Policy Center, Urban Institute and the U.S. Department of Housing and Urban Development (HUD).

[4] Housing inflation increased by 4.8% between January 2023 and January 2024, and 25.5% since January 2019, according to the U.S. Bureau of Labor Statistics. Housing costs alone are about one-third of the market basket of goods and services used to track inflation.

[5] See research from the Chicago Metropolitan Planning Council (MPC) and the Institute for Housing Studies at DePaul University.

collected by the State of Illinois, Cook County and City of Chicago on behalf of the Chicago Transit Authority, each of which are paid by the seller in a property transaction.[6]

EXECUTIVE SUMMARY

Implementing a graduated real estate transfer tax as a source of new revenue has some advantages, but it is also extremely volatile. There has not been sufficient evaluation of the proposed graduated tax's potential impact on the City's real estate market and economy or a public explanation as to how the changes to the tax would impact tax burden by location and property use type. Through an analysis of transfer tax data obtained from the Illinois Department of Revenue, Civic Federation staff reached the following findings, which are based on hypothetical application of the proposed marginal tax rates to historical property transactions and compared to the existing flat rate:

- The amount collected from the City's existing real estate transfer tax (RETT) has varied from year to year depending on market conditions. There was a significant drop off in RETT proceeds in 2023 ($140.5 million) compared to 2022 ($201.4 million), a decline of 30%.

- Had the proposed graduated real estate transfer tax rates been applied to the same transactions that occurred within the 14-year period from 2010-2023, the tax would have generated an average of $128 million, or 83%, more than was generated through the existing flat rate.
    - After removing several large transactions related to the Illinois Skyway that occurred in 2016 and 2022, the graduated tax would have generated an average of $117 million in additional revenue, averaged between 2010 and 2023.
    - These estimates generally align with the City of Chicago's estimates of $100 million in additional revenue per year. However, the Federation's numbers should be read as merely a hypothetical estimate based on historical data, not a projection of future revenue.
    - It is also important to recognize that it is unlikely that every transaction would have occurred in exactly the same way if the graduated income tax had been in place.

- The proposed graduated real estate transfer tax would increase the proportion of City transfer tax collected from commercial property transactions.
    - Based on the existing tax rate, buyers of commercial properties paid approximately 20% of the total Chicago transfer tax on average across the 14-year period from 2010 to 2023.
    - If the proposed graduated tax structure had been applied to the same transactions, commercial property transactions would have accounted for approximately 36% of total Chicago transfer taxes.
    - The share paid in residential property sales would have decreased from 57% of total transfer taxes paid based on the existing rate, to 34% of total tax collections based on the graduated rate, on average, over the 14-year period.

[6] See the Civic Federation, "Chicago to Vote on Real Estate Transfer Tax in March 2024," for additional details.

- The portion of Chicago transfer taxes paid in commercial property transactions within the downtown central business district (consisting of the Loop, West Loop, South Loop and Near North Side) would have doubled with the graduated tax rates.
    - Based on the existing flat rate, commercial property transactions in the downtown area accounted for approximately 15% of all Chicago transfer tax collections on average from 2010-2023.
    - If the graduated tax structure had been applied to the same transactions, these commercial property transactions would have accounted for 28% of total Chicago transfer taxes.

As part of the Civic Federation's evaluation of the Bring Chicago Home proposal, we sought to understand the policy implications of the tax proposal that have not been clearly publicized by the City and Mayoral administration. The questions that Federation staff submitted to City of Chicago and the information that we obtained from communications with City representatives are included in this report.

The Federation's evaluation also included research into other cities that have enacted similar types of taxes. Researchers looked closely at Los Angeles to identify impact, lessons learned or unintended consequences. Los Angeles voters approved a measure in November 2022 to apply a graduated marginal real estate transfer tax (RETT) rate to property transactions valued at over $5 million, to be imposed in addition to an existing flat rate of 0.45%. The implementation of the tax led to a spike in property sales ahead of the effective date by property owners looking to avoid the new higher tax. Neighboring jurisdictions without the graduated RETT have the potential to become more desirable for high-end luxury real estate. Federation research found that there are problems associated with the new tax, including inconsistent application of the tax to nonprofit properties, the creation of a disincentive to build multi-family housing, and the continued availability of several tax avoidance strategies that could reduce revenue generated by the new tax. The tax was estimated to generate between $600 million and $1.1 billion annually. However, it generated only $150 million in the first eight months of implementation.

METHODOLOGY

Overview of the Research Process

To evaluate the Bring Chicago Home proposal, the Civic Federation conducted background research on several aspects of the real estate transfer tax. These efforts included:

- Discussions with City of Chicago staff about the Federation's questions regarding policy implementation of the graduated tax should the referendum pass. The responses to these policy questions are presented in the following sections.
- Analysis of historical property transfers to compare the tax revenue generated in past years to how much tax revenue would have been generated through the proposed graduated tax structure, had all things been equal. The Federation's data analysis methodology is provided below and data findings are detailed on p. 14.
- Comparisons to other cities, including Los Angeles, Santa Fe and Evanston, IL, which are summarized in a January 2024 Civic Federation blog post, "Chicago to Vote on Graduated

Real Estate Transfer Tax in March 2024." The Civic Federation conducted a case study of the Los Angeles experience; those findings are detailed on p. 21.
- Background research on barriers to affordable and low-income housing both nationally and specific to Chicago.

Data Analysis Methodology

To evaluate the hypothetical impact the graduated real estate transfer tax could have had on revenue generated by the tax in past years, the Civic Federation analyzed a data set provided by the Illinois Department of Revenue (IDOR) with data on property transfers that occurred within the City of Chicago between 2010 and 2023 that were subject to real estate transfer taxes.[7] Data variables included information on each property sale value, date of transfer, property identification number, amount of real estate transfer tax collected by the City of Chicago, Chicago Transit Authority, Cook County and State of Illinois, current and intended property use type as reported to IDOR,[8] and location information including the address, zip code and township. The data set included 737,493 total transactions.

There were several limitations to the data set including some discrepancies and omissions. For example, 202,489 of the properties included in the data set did not have any data on the use type (e.g., residential, commercial, apartment building or industrial). Of these transactions, 80% had property transfer values of $0, and another 10% had very low sale values of $10 or less. Therefore, these property sales generated little to no tax revenue and had minimal impact on the tax calculations. Additionally, there were 13,069 property transactions with a use type classified as miscellaneous. Where possible, we reclassified properties that clearly fell into a category (for example, parking lots were classified as commercial properties). It should be noted that several large toll road transactions fall within the miscellaneous use type category. Other oddities included transactions with $0 in net taxable value (sale price), but that were recorded as having generated city tax revenue, or the opposite—transactions that generated no tax revenue for the City despite having net taxable revenue, as well as a small number of negative tax values that likely were in error. Transactions recorded as generating no City tax were filtered out of the calculations so as not to overstate the hypothetical revenues based on the proposed graduated tax rates.

The Civic Federation also notes that the estimates for City RETT transactions, values and tax collections in 2010 and 2011 as reported in the IDOR data set are significantly lower than revenues reported in City of Chicago budget documents. All other years in the dataset produced results that were much closer to the actual revenues reported by the city. We have included 2010 and 2011 in the following data analysis for completeness because it is the Federation's understanding that the City of Chicago's dataset that was used to generate its revenue projections included those years, but emphasize to readers that ***all of the hypothetical estimates in the analysis, but particularly for those years, should be interpreted as rough approximations and are NOT projections of future collections***.

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[7] It is important to recognize that the analysis is hypothetical and for illustrative purposes only. It is unlikely that in the case the graduated real estate transfer tax had been in place between 2010 and 2023 the exact same sales would have taken place.
[8] Self-reported use type is not equivalent to the assessment classification, but provides context on the use of the property.

The following are the use type classifications used in the data analysis, as reported to IDOR:

- Apartment: includes apartment buildings with six units or less and apartment buildings with more than six units;
- Industrial building;
- Commercial: includes office buildings, retail establishments and other commercial (e.g. parking lots/garages, hotels, banks, shopping centers);
- Residential: includes single-family residence, condominium, townhome, duplex and mobile home residence;
- Other/Miscellaneous: includes land/lot only, farm, and miscellaneous (e.g., churches, schools, multi-use property that was not clearly classified as residential or commercial, toll roads and other unidentifiable property types);
- No data

For purposes of analyzing the impact to commercial property in the downtown business district, the following zip codes were used to identify the downtown area for certain types of commercial property:

- Office buildings, retail and industrial buildings: zip codes 60601, 60602, 60603, 60604, 60606, 60607, 60610, 60611, 60654, 60661. These zip codes encompass the Loop, West Loop and Near North Side from the Chicago River up to North Avenue and from Halsted Street to Lake Michigan.
- Apartment buildings and hotels: zip codes 60601, 60602, 60603, 60604, 60605, 60606, 60607, 60610, 60611, 60654, 60661. These zip codes encompass the Loop, West Loop, Near North Side and South Loop.

Policy Implementation Questions

Civic Federation researchers identified a number of policy questions that had not been sufficiently explained by publicly available documents, such as the referendum question, the Bring Chicago Home FAQ document and the draft implementing ordinance. The following are the questions we submitted to the City of Chicago, along with answers compiled by Civic Federation staff based on responses from staff within the Mayor's Office and Department of Housing, both verbally and via email, and the Federation's own analysis and critiques. While the Federation hopes to expand voters' understanding of the proposal, this report does not obviate the need for the City of Chicago and advocates to provide more information to voters about the Bring Chicago Home proposal.

Planning and Evaluation

Q: How will the revenue generated by the graduated real estate transfer tax be used?

Outside of the draft Bring Chicago Home implementation ordinance and the FAQ document, the Civic Federation has not seen any more specific or formal written plans. The draft Bring Chicago Home implementation ordinance, introduced at the October 4, 2023 City Council meeting and listed under Miscellaneous Business, lays a basic framework with broad goals and plans for utilizing funds from the RETT to address homelessness and affordable housing. The draft ordinance defines eligible uses of the funds as any means of support provided by the City or a delegate agency to people experiencing or at risk of homelessness, including permanent affordable housing and services necessary to obtain affordable housing.

Based on communications with the City's Department of Finance and Department of Housing, eligible uses encompass permanent supportive housing, preservation and rehabilitation of housing, homeless shelters and wrap-around services.[9] The framework for use of the funds is also guided by eligible populations, which include any Chicago resident who meets the definition of homelessness under federal law or any person who faces housing instability, including fleeing gender-based violence, living doubled up, or having recently been released from jail, prison or a treatment facility. Details about the use of the funds are subject to further negotiation and approval by City Council if the referendum is upheld by the courts and approved by voters.

Spending plans will be approved through the City's annual budget process rather than through a more specific earmarking of funds for particular programs. City staff noted the importance of leaving a reasonable amount of flexibility built into the plan in order to avoid the experience of Los Angeles, which outlined specific uses of the funds that were out of date by the time the new tax structure generated revenue.

The Civic Federation is concerned that there is not enough public information at this time for voters to make an informed decision about how the City of Chicago will spend proceeds of the proposed graduated RETT so that City policymakers and leaders can be held accountable and an evaluation of progress can be made.

Q: What are the program goals and how will progress be measured and reported?

City officials offered several broad goals in response to questions from Civic Federation staff, including increasing permanent supportive housing and transitional housing for vulnerable populations, reducing barriers to access, increasing options available to vulnerable populations through services like emergency rental support and reducing the number of unsheltered homeless people. However, the goals have not been well defined or articulated by the City. For example, there are no specific goals such as reducing the number of unhoused people by a certain percentage over a period of time, or the number of individuals to be served by housing assistance or wraparound services. The ordinance implementing the graduated RETT will be subject to change. Specific goals must be added now by the City Council in consultation with the Administration so that residents will be able to hold the City accountable for how it spends any funds generated should the tax be approved.

Existing City ordinance includes reporting requirements for the Chicago Department of Housing and Department of Family and Support Services to produce an annual report on homelessness

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[9] It is the Civic Federation's understanding from City of Chicago staff that all of these uses have connection specifically to homeless and at-risk populations, rather than the broader need for affordable housing by people who are not currently unhoused or at risk of becoming unhoused. For example, supportive housing can be part of an affordable housing development paid for with other funds, but specific supportive units with enhanced services could be "purchased" within the larger affordable development with funds from BCH. According to the National Institutes of Health, supportive housing, "offers residents an array of services intended to promote housing retention while also meeting other social and health needs."

and housing. The draft BCH ordinance would enable reporting on BCH spending to be included in this report. The draft ordinance does not, however, provide sufficient authority for the BCH Advisory Board that will be appointed by the Mayor with the approval of the City Council to obtain all relevant materials it would need in order to report on program outcomes, nor is it clear the Board would have the necessary expertise and resources in order to provide such reporting to assure after the fact, transparent, performance accountability. Without well-defined goals and metrics, it will be difficult for the public to hold the City accountable for delivering on addressing homelessness through Bring Chicago Home.

Q: Does the City have enough organizational capacity to handle an influx of funds and deliver improved services?

Representatives from the City of Chicago's Department of Housing told Civic Federation staff that the department has been enhancing administrative capacity in several ways. It is building capacity by requiring affordable housing developers who work with DOH to set aside 5% of affordable housing being constructed for supportive housing[10] and which previously was a voluntary requirement. This will mandate for the first time that developers incorporate that model into their developments and is intended to increase the pool of developers with supportive housing experience. This kind of capacity-building will continue whether or not the referendum is approved.

Additionally, the City has been working with All Chicago, the All INside initiative, and the Government Performance Lab to improve operational efficiency and outcomes for many homelessness systems, such as the Coordinated Entry System. Homelessness programs are provided through a variety of government and nonprofit partners through a Continuum of Care administered by All Chicago. The City anticipates that improving pay levels for these providers through Bring Chicago Home funding will improve capacity by creating stability and improving retention in these organizations so that they can provide consistent and higher levels of service.

The Civic Federation is concerned that if the referendum passes, there is a possibility that the BCH funds may be used to replace other sources of funding currently used for existing service programs *unless* the enabling ordinance is revised to expressly specify that these additional funds would be in addition to existing resources. In other words, the City should avoid the problem that occurred with the Illinois Lottery, whereby Lottery funds replaced other State funds used for education rather than increasing overall funding to education.

Q: What partner agencies are involved in affordable housing and homelessness services provided by the City of Chicago, and is there sufficient coordination between entities?

Homelessness programs include a wide variety of government and nonprofit partners including the City of Chicago's Department of Family Supports and Services, Department of Housing and Chicago Department of Public Health. Partners include the Continuum of Care, which is administered by All Chicago and whose board includes a wide variety of

[10] Permanent supportive housing is defined by the National Institutes of Health as a program that, "offers residents an array of services intended to promote housing retention while also meeting other social and health needs."

service and housing providers, representatives from the Department of Housing and Urban Development, the Chicago Housing Authority, City departments and the Mayor's Office. The Continuum of Care board is the formal forum for coordination of federal homelessness resources and also serves as a point of coordination for other homelessness resources and initiatives. Through the Continuum of Care, the Chicago Coordinated Entry System connects individuals experiencing homelessness to permanent supportive housing and rapid re-housing. Other programs provided by DFSS and DOH include connection to homeless shelters; wraparound services for behavioral health, substance abuse and domestic violence; rental assistance and emergency rental assistance.

City staff noted that the nonprofit service providers that partner with the City will stand to benefit from additional funding from Bring Chicago Home by using the funding to increase compensation for staff responsible for connecting clients to housing services and wraparound services, thereby improving retention and stability of service coordination. However, it is important that any such funding be monitored and evaluated to ensure it is helping to increase the level of and access to homeless services.

Financial Stewardship and Accountability

Q: How will the City handle the volatility associated with the real estate transfer tax?

The City is expecting the amount of revenue generated annually by the graduated RETT, if passed, to fluctuate annually, as has been the experience associated with the flat real estate transfer tax rate. Proceeds generated from the graduated tax structure would be deposited into a special purpose fund dedicated to the Bring Chicago Home initiative, after first holding the Corporate Fund harmless against revenue that it would have generated under the existing flat tax. Before funds are directed to the special purpose fund, the City would first calculate how much revenue would have otherwise been generated based on the current rate of 0.75%, or $3.75 per each $500 of property transferred. This amount would be deposited into the Corporate Fund, which is the City's general operating fund. All remaining proceeds from the higher marginal RETT rates (2% for property transfers of between $1-1.5 million and 3% of property transfers valued at over $1.5 million) would be deposited into the Bring Chicago Home Fund.

Because of the volatility of this tax source, the City only plans to spend down funds in the Bring Chicago Home Fund after the fund reaches a certain threshold deemed sufficient to cover anticipated program and administrative costs. The Bring Chicago Home draft ordinance also says, "the Budget Director, in consultation with relevant City departments and the Advisory Board, shall determine the maximum amount of funds from the Bring Chicago Home Fund to be included in the budget recommendation for eligible uses. In making this determination, the Budget Director shall make reasonable efforts to minimize the potential for disruption to people experiencing or at risk of homelessness served by programs funded by the Bring Chicago Home Fund due to a decline in future revenue." While it is laudable that the City is considering how to address the inherent volatility of the RETT revenue, the process outlined in the ordinance does not resolve the inherent tension between what will be intense pressure to start and continue programming and a revenue source that is not best suited as a dedicated revenue source to fund ongoing programming due to its volatility.

Q: What are the anticipated recurring programmatic and administrative costs?

The City does not yet have estimates for recurring costs, which they said would depend on spending plans approved by City Council.

Q: Will the Bring Chicago Home initiative leverage funding from other sources?

The City plans to complement Bring Chicago Home funding with other sources such as federal low-income housing tax credits, Community Development Block Grants, Housing Opportunities and Maintenance for the Elderly (HOME), Tax Increment Financing (TIF) and other programs, among possible others. The City indicated that an initiative it has been working on that would potentially allow it and other local governments to capture property tax revenue from TIF districts set to expire within the next ten years, and repurpose that funding source to issue long-term debt to finance affordable housing and community development initiatives would be another source of funding. This kind of capital financing could help complement the operational revenue raised within the Bring Chicago Home fund.

Q: Will the BCH initiative address any existing barriers to affordable housing in Chicago?

BCH is intended to build on initiatives to reduce barriers to equitable access to housing supports and increase administrative capacity, as discussed above. However, the initiative does not appear to address some of the processes that present barriers to building affordable housing, such as aldermanic prerogative or zoning policies.

Q: What oversight and accountability mechanisms will oversee the use of the Bring Chicago Home Funds?

The draft Bring Chicago Home ordinance establishes an Advisory Board to be appointed by the Mayor with the approval of the City Council. The Advisory Board would include 15 voting members composed of community members, service providers and citizens directly impacted by homelessness. The Board would also include three non-voting ex officio members and five designated non-voting members. The Advisory Board's powers and duties would include holding public meetings, conducting community outreach, making spending recommendations, establishing goals and metrics and tracking participant and program outcomes.

Approval of annual appropriations would be handled through the City Council's annual budgeting process.

The Civic Federation has some concerns about the makeup of the proposed advisory board and accountability structure. The Advisory Board could be strengthened by requiring that members represent additional areas of expertise and by providing the Board with the necessary authority to obtain all relevant materials that it would need to evaluate and report on program outcomes. Additional reporting requirements would also provide the public and policymakers with more detailed and transparent information about program progress and outcomes. The Federation's recommendations for improvement can be found in the position statement.

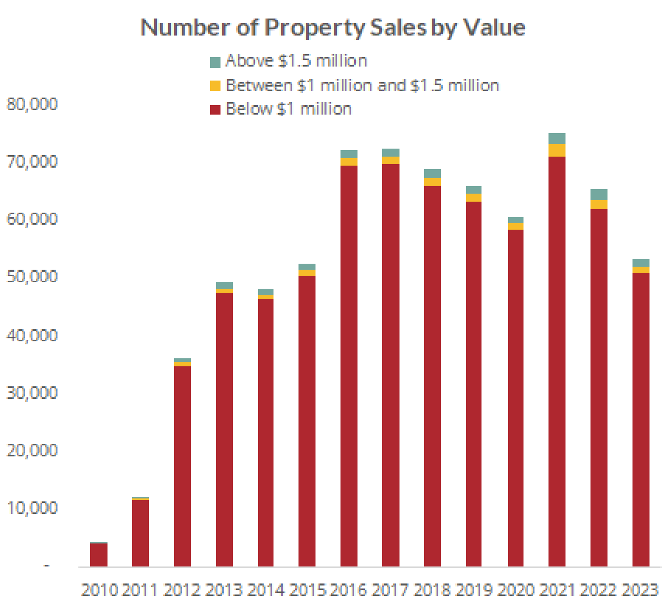
DATA FINDINGS

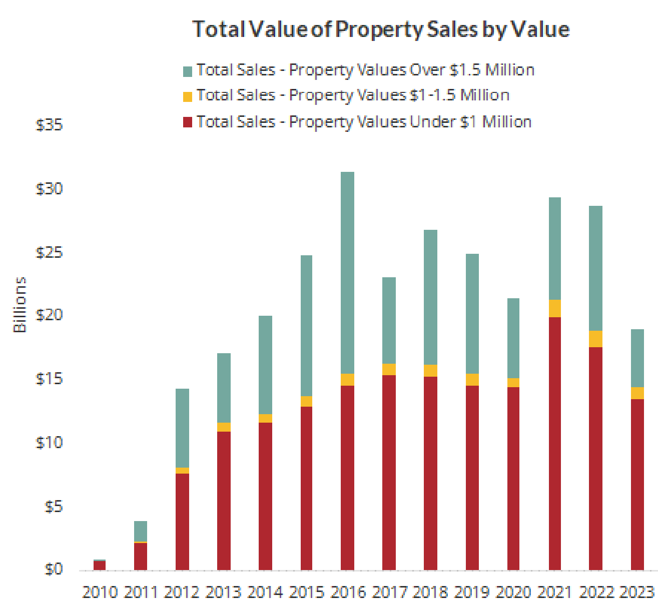
Based on the Civic Federation's analysis of data provided by the Illinois Department of Revenue, we were able to draw several conclusions about the hypothetical impact that the graduated, marginal tax rates in the proposed referendum might have had on revenue collected in historical transactions. This section presents those conclusions and findings.

Property Sales

There is wide annual variation in property transactions based on market and economic conditions. We examined the 14-year period from 2010 through 2023 and found that the number of property sales that took place in Chicago in 2010 and 2011 following the Great Recession was extremely low compared to later years.[11] The number of property sales increased significantly in 2016, and there were also bumps in the number of transactions in 2021 and 2022 during the market upturn following the COVID-19 pandemic.

The vast majority of the property sales between 2010 and 2023—96% on average—were properties valued at below $1 million. Another 2% of transactions were for properties valued between $1-1.5 million and 2% were sales more than $1.5 million. However, the total dollar value of those sales of properties over $1.5 million comprised 35% of the total value on average between 2010 and 2023.





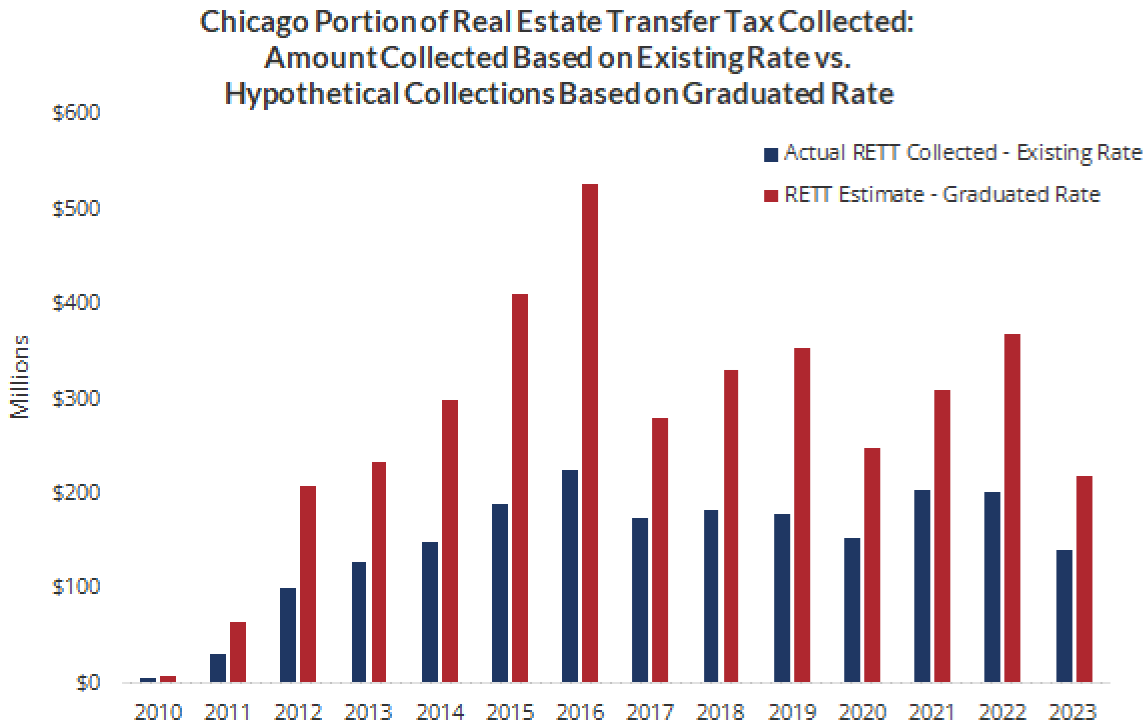
[11] The dataset is artificially low in its number and value of transactions in 2010 and 2011, but the City of Chicago's reported RETT revenues were 61% lower than in 2007 before the real estate market crash.

Historical Transfer Tax Revenue vs. Hypothetical Calculations Based on Referendum Rates

The Civic Federation made calculations to determine how much tax revenue would have been collected in past years had the graduated tax structure as proposed in the Bring Chicago Home referendum been in effect, and assuming no real estate market impact, i.e., a change in the number of transactions. The referendum proposes changing the City of Chicago portion of the real estate transfer tax from a tax rate of 0.75% on all property regardless of value to graduated marginal rates of 0.6% on property valued at less than $1 million, plus 2% on any portion of a property transfer valued between $1 million and $1.5 million, and 3% on the portion of a property transfer worth more than $1.5 million. This is a one-time tax that occurs at the time of a property sale and is paid by the buyer.

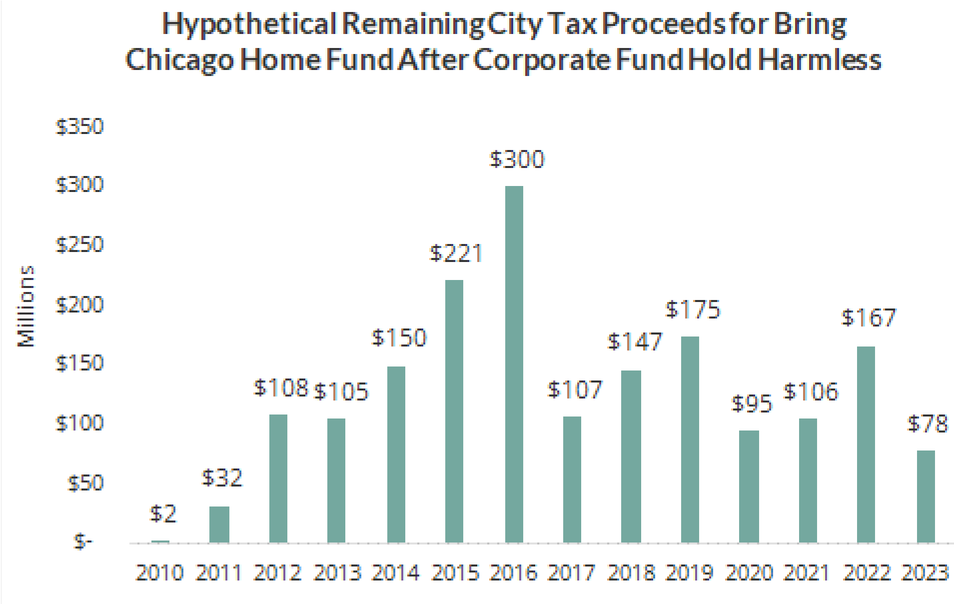
The Federation's analysis found that the graduated RETT tax structure would have generated about $128 million, or 83%, more tax revenue on average for the City of Chicago than was actually collected based on historical transactions between 2010 and 2023. It is important to note that this is not a projection but rather a hypothetical calculation based on past actual sales, assuming that those exact same transactions had occurred.

While on average over this period the graduated tax rates would have generated $128 million more than the existing tax, there is wide variance from year to year, with a standard deviation of $75 million. There are also unusually large property sales included in the data, such as large toll road transactions that occurred in 2016 and 2022. After removing those large transactions from the tax calculations, the graduated tax would hypothetically have generated an average of $117 million, or 79%, more than the actual collections based on the existing flat rate. These estimates are not far off from the City's projections that Bring Chicago Home would generate approximately $100 million annually for the special purpose fund to address homelessness and affordable housing. However, we would again point out that this is a hypothetical case where the sales that occurred historically were not impacted by the imposition of the tax. It is not indicative of what might happen in the future without being able to predict the impact of a change in tax structure and other market conditions on future property sales.



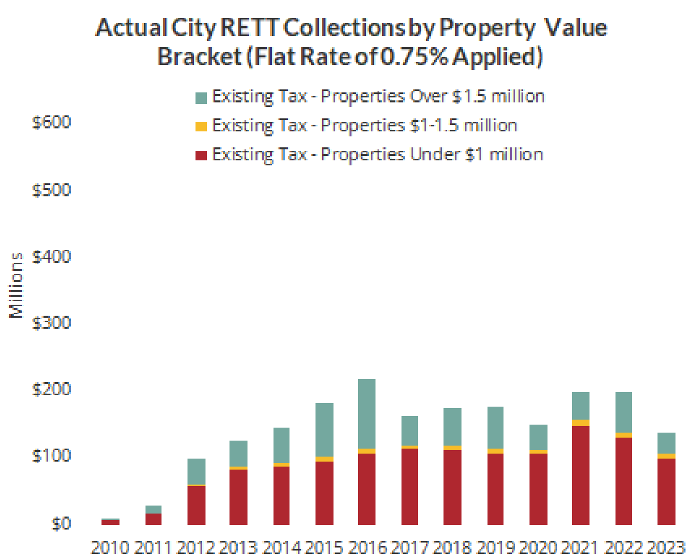
The draft Bring Chicago Home implementing ordinance includes a "hold harmless" provision, which directs that any proceeds from the proposed tax generated from the marginal rates applied to properties over $1 million would be deposited into a special purpose Bring Chicago Home fund, *after* first ensuring that any proceeds that *would have been generated* from the previous flat rate of 0.75% are deposited into the City's Corporate Fund, or general operating fund.

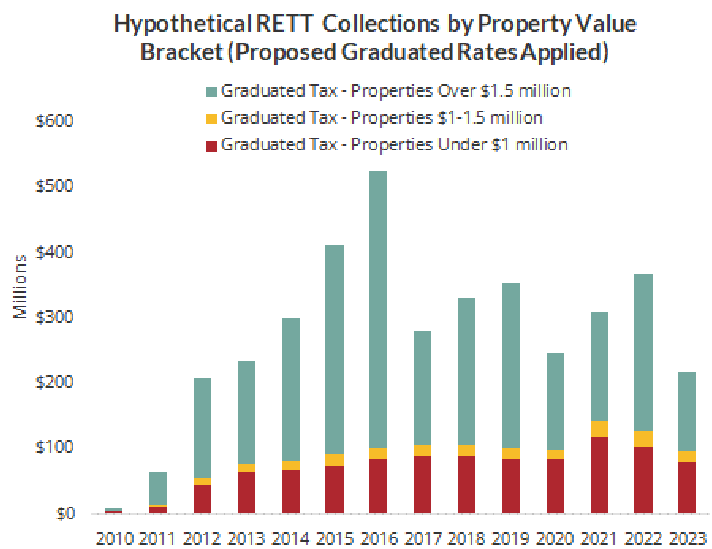
The next chart shows the difference between the actual City tax collections based on the existing flat rates and the hypothetical collections that would have taken place based on the proposed graduated rates. This could be considered the remaining amount for the Bring Chicago Home fund after holding the Corporate Fund harmless.



Shift in Tax Collections Based on Marginal Property Value Brackets

The next two charts show the difference between actual City RETT collections and estimated collections based on application of the graduated, marginal rates, broken down by the three property value brackets as laid out in the proposed Bring Chicago Home referendum: properties under $1 million, properties between $1-1.5 million and properties over $1.5 million. As shown, a significant portion of the tax revenue collected would shift coming from properties valued at under $1 million to properties valued at over $1.5 million.

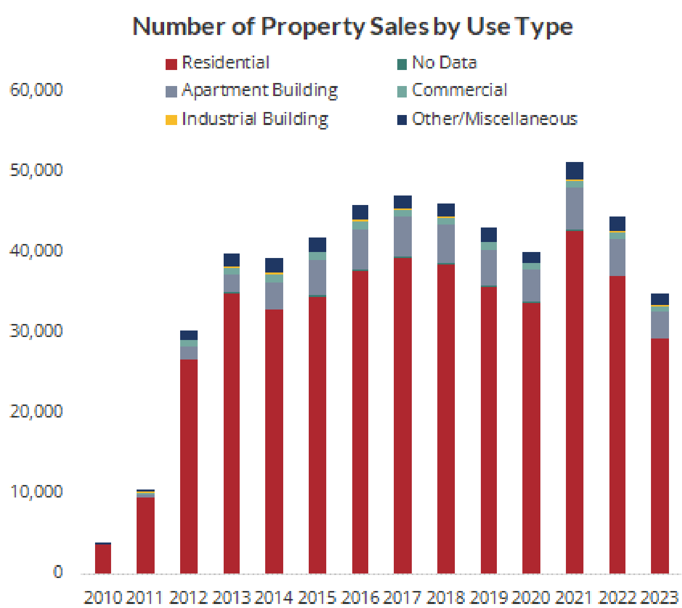


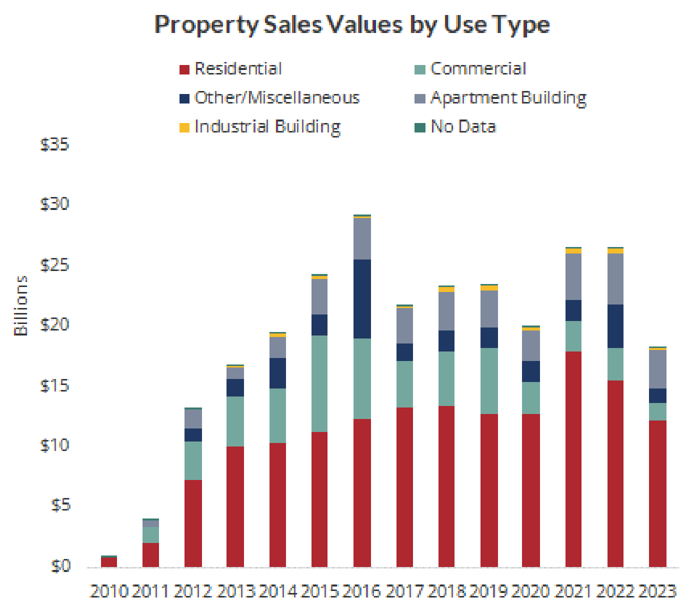


Shift in Tax Collections by Property Use Type

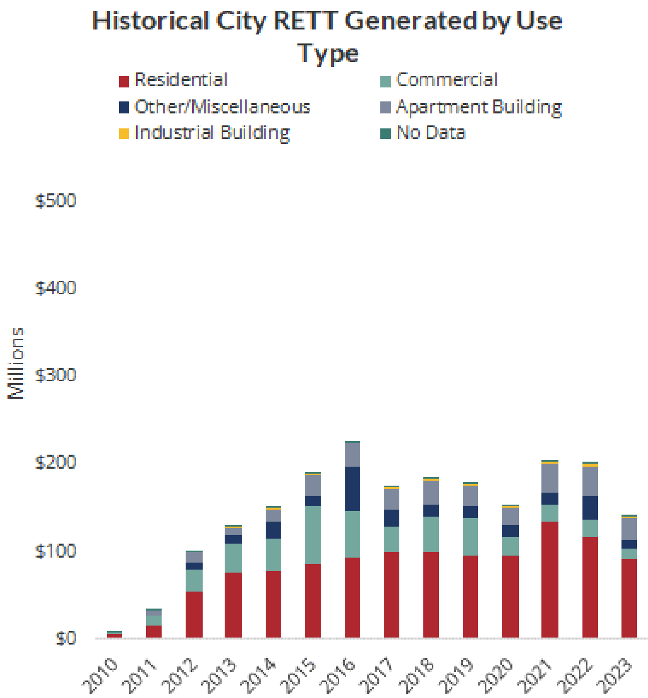
As part of the analysis, the Civic Federation examined the shift that could occur with new marginal, graduated rates applied to properties based on their use type: residential, apartment building, industrial building, commercial or other miscellaneous uses. It should be noted again that these are self-reported use types and therefore are subject to the issues noted above in the methodology section.

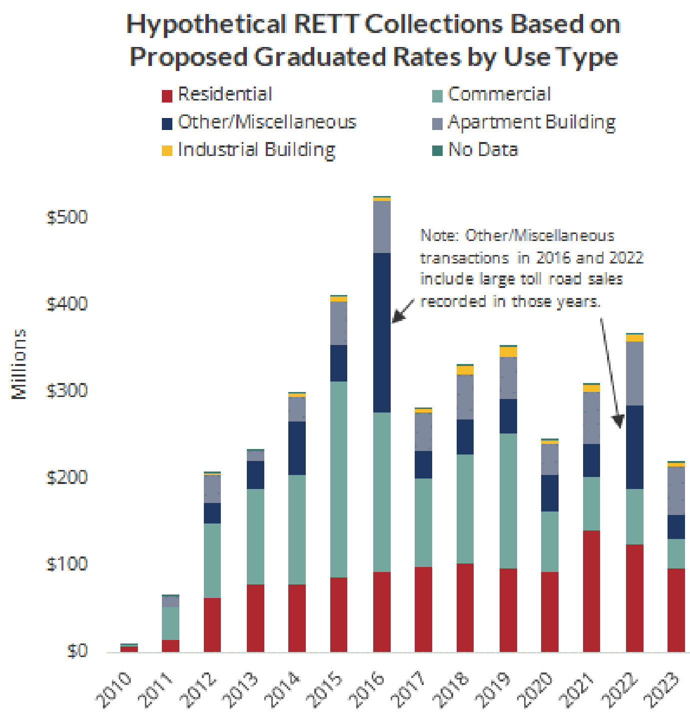
While residential properties made up the largest portion of reported property transfers between 2010 and 2023 (averaging 85% of transactions), they made up only 59% of the total dollar value of property transferred during that same period, while commercial property accounted for an average of 20% of the total value of property sales.





The Federation's analysis finds that the proposed graduated real estate transfer tax would increase the amount and percentage of overall City transfer taxes collected from commercial property transactions. Based on the existing flat tax rate, commercial properties paid 20% of total Chicago transfer taxes on average across the 14-year period from 2010 to 2023. If the graduated tax structure had been applied to the same transactions, commercial property transactions would have accounted for 36% of total Chicago transfer taxes. The share paid in residential property sales would have decreased from 57% of total transfer taxes paid based on the existing rate, to 34% of total tax collections based on the graduated rates, on average, over the 14-year period.

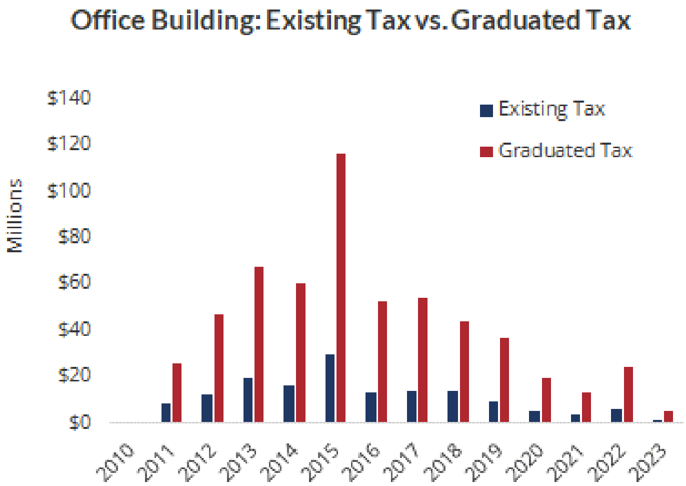


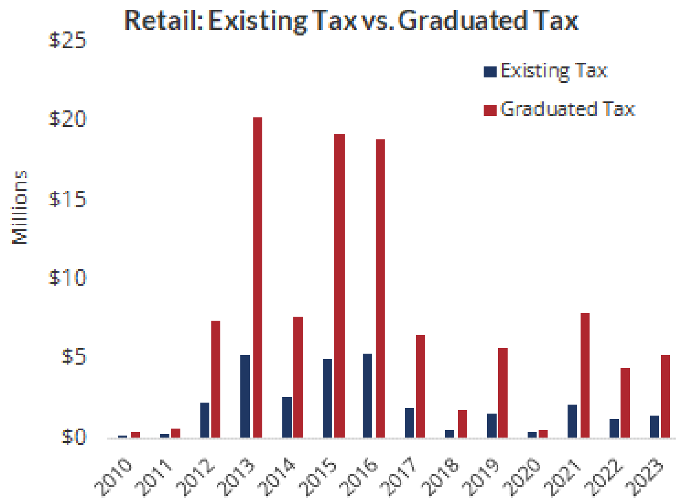


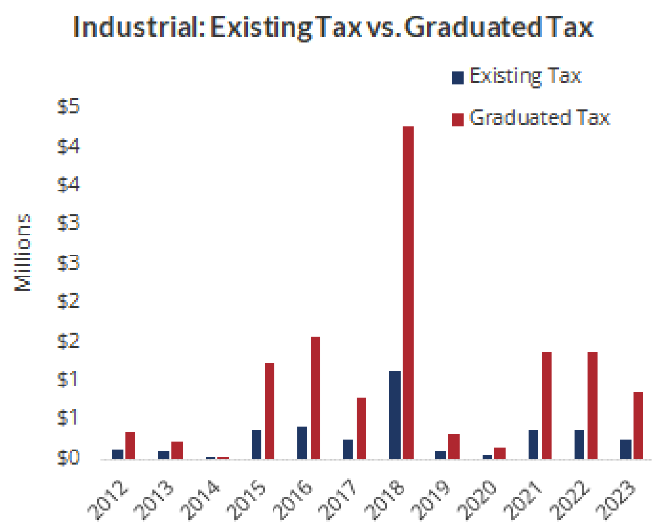
Impact to Downtown Commercial Property

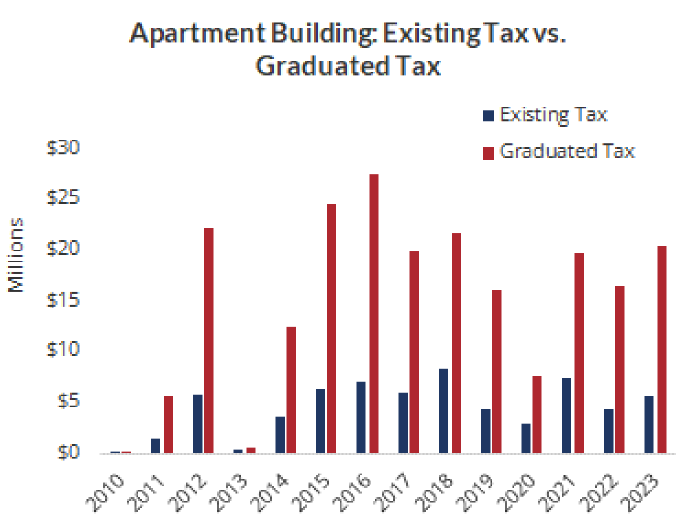
Looking at the portion of Chicago transfer taxes paid in commercial property transactions within the downtown central business district (consisting of the Loop, West Loop, South Loop and Near North Side), the RETT paid in certain types of commercial property sales in the prior analyzed years would have nearly doubled with the graduated tax rates from the existing flat rate. Based on the existing rate, commercial property transactions in the downtown area accounted for 15% of all Chicago transfer tax collections on average from 2010 to 2023. Conducted with the proposed graduated tax structure, the same commercial property transactions would have accounted for 28% of total Chicago transfer taxes.

The series of charts below shows the hypothetical shift in commercial property taxes that would have been paid for historical commercial property transactions in downtown Chicago with the proposed graduated tax rate compared to what was actually paid based on the existing tax rate. The commercial property use types examined here include office buildings, retail, industrial, apartment buildings and hotels.


Office Building: Existing Tax vs. Graduated Tax
Existing Tax
Graduated Tax
Millions
$140
$120
$100
$80
$60
$40
$20
$0
2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023


Retail: Existing Tax vs. Graduated Tax
Existing Tax
Graduated Tax
Millions
$25
$20
$15
$10
$5
$0
2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023


Industrial: Existing Tax vs. Graduated Tax
Existing Tax
Graduated Tax
Millions
$5
$4
$4
$3
$3
$2
$2
$1
$1
$0
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023


Apartment Building: Existing Tax vs. Graduated Tax
Existing Tax
Graduated Tax
Millions
$30
$25
$20
$15
$10
$5
$0
2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023


Hotel/Motel: Existing Tax vs. Graduated Tax
Existing Tax
Graduated Tax
Millions
$25
$20
$15
$10
$5
$0
2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023

Case Study: The Los Angeles Experience with Measure ULA

City of Los Angeles voters approved a graduated real estate transfer tax structure in Measure ULA in November 2022 by a margin of 58% to 42%.

Measure ULA is the third initiative targeted at addressing homelessness approved in the Los Angeles region since 2016. Los Angeles County voters approved Measure HHH in 2016, which authorized the issuance of $1.2 billion in bonds to fund 10,000 new units of housing for homeless people and people at risk of becoming homeless, as well as to fund facilities that provide mental health care, addiction treatment and other services. Los Angeles County also approved Measure H in 2017 to adopt a 0.25% county sales tax for 10 years in order to fund homeless services and prevention. It is projected to raise at least $355 million annually. The funding is allocated to nonprofits providing direct service throughout the County.

Measure ULA increases transfer taxes for properties valued above $5 million by adding additional tax rates to an existing base rate of $2.25 per $500 of property value, or 0.45% applicable to all property sales. The Measure ULA tax rates impose an additional 4% tax on property transfers valued between $5 million and $10 million and a 5.5% tax on property transfers valued over $10 million. Therefore, the measure effectively increases the transfer tax rates to 4.45% for property sales between $5 million and $10 million, and to 5.95% for properties worth more than $10 million.

The ULA tax rates will be adjusted annually based on the Bureau of Labor Statistics Chained Consumer Price Index. Implementation of Measure ULA is overseen by an appointed Citizen Oversight Committee. Certain housing, non-profit and public entities are exempt from the tax.

The Purpose of Measure ULA

The argument for the initiative was that the new funding was needed because current efforts by the City of Los Angeles to address homelessness and affordable housing needs were inadequate.

The ballot initiative language stated that the purpose of Measure ULA is “to develop, construct, or acquire up to 5,000 additional units of low-income rental housing in each Council District, for a total of up to 75,000 additional units of low-income housing within the City, to address homelessness and affordable housing needs, subject to availability of funding and City development requirements.” The tax was initially estimated to generate approximately $600 million to $1.1 billion annually for existing and new programs. The initiative language directed the use of at least 92% of the revenue for affordable housing and tenant assistance programs administered by the Los Angeles Housing Department, and up to 8% for administration.
A primary use of the 8% set aside will be to pay for the services of an inspector general and staff who will audit progress as to how funds are being spent. This differs from the language of the Bring Chicago Home referendum, which does not specify how revenue will be distributed.

The Measure established a Citizens Oversight Committee to make funding and program recommendations and a Tenant Council to advise on housing matters.

Current Spending Plan for Measure ULA Funds

In August 2023, the Los Angeles City Council passed an initial $150 million spending plan for funds raised by the tax:

- $56.8 million for Multifamily Affordable Housing Accelerator Plus;
- $30.4 million for Short-Term Rental Assistance;
- $11 million for Los Angeles Housing Services Authority's Time-Limited Subsidy program focused assisting seniors and persons with disabilities;
- $23 million for Eviction Defense/Prevention;
- $5.5 million for Tenant Outreach and Education;
- $11.2 million for Protections from Tenant Harassment; and
- $12 million for costs related to administration such as staff, tenant council, grants and contracts.

Issues and Concerns with Measure ULA

A review of published reports has shown a number of experiences, issues and concerns that have arisen in connection with the passage of Measure ULA to date.

Numerous Property Transactions Ahead of Implementation Date to Avoid the Tax

The effective implementation of Measure ULA may have had a *negative* impact on high end property sales in Los Angeles. In March 2023, prior to the measure taking effect, there were 126 home and condo sales above $5 million. Sellers cut prices, had escrows fast tracked and offered bonuses and other inducements to offload their properties. In April 2023, the first full month after the measure took effect, there were just two sales, raising $528,000 from the real estate transfer tax.

Overall, approximately $21.5 billion in commercial property was sold in Los Angeles in 2023. This is a reduction from $41.2 billion in the previous year. Analysts noted a prevalence of confusion and concern about the tax and its transactional impact that in turn prompted consideration of a new referendum initiative to repeal the ULA among other special taxes.

A Potential Shift of Development to Neighboring Jurisdictions

The imposition of the graduated real estate transfer tax in Los Angeles is further thought to potentially incentivize a shift in development to other cities in Los Angeles County that do not impose the tax.

Real Estate Market Uncertainty Due to Upcoming Statewide Ballot Initiative

Californians will vote on a statewide ballot initiative in November 2024 that would require a two-thirds affirmative vote on any local tax increase proposals going back to January 2022. If passed, the initiative would repeal Measure ULA as it does not meet the two-thirds affirmative vote threshold. Taxpayers would be entitled to refunds if the statewide ballot initiative is approved. The uncertainty of the outcome is thought to have placed a damper on the high value Los Angeles real estate market.

Measure ULA Places Burden on Property Sellers, Not Buyers

Sellers are responsible for paying the new Los Angeles graduated real estate tax, unlike in New York City or the Chicago portion of the real estate transfer tax where buyers are responsible for payment. This imposes the tax financial burden in high end real estate transactions from the buyer to the seller. A buyer considering a purchase of high value real estate is likely wealthy. The seller, however, may be house rich and cash poor. The buyer can afford to wait until the seller reduces the price and in some instances may choose not to proceed at all and look to options in surrounding areas in which the property transfer tax is not imposed.

Measure ULA Is Not Applied Consistently

A survey published in January 2024 by CoStar News found wide variation in how the new Los Angeles real estate transfer tax is being applied. Measure ULA exempts certain groups from the tax: qualified affordable housing organizations, nonprofits and government agencies.[12] However, in a review of commercial property sales above $5 million since April 2023, CoStar found that the tax was paid on some deals involving nonprofits but not on others. For example, Hudson Pacific Properties and Macerich were exempted from $40 million in RETT when they sold a former mall to the University of California because the university is a public university. But the Fashion Institute of Design & Merchandising was assessed the RETT when it sold a building to the Arizona Board. In sum, the tax was paid on some deals involving nonprofits but not others even though nonprofits are exempt. CoStar concluded that it was not clear which properties qualified for an exemption.

Measure ULA Tax Avoidance Strategies

According to an article authored by Geoffrey Gold of Ervin, Cohen and Jessup LLP on JD Supra, there are several strategies that might be employed to allow a seller to minimize or negate the impact of Measure ULA. Please note that some of these are theoretical, have not been tested and would not necessarily apply in Chicago.

1. Divided Interest: The mansion tax is a documentary transfer tax imposed on the sale of a single real property interest. Partnerships, corporations or limited liability companies might avoid the new tax by selling interests in the entity that owns the asset rather than selling the entire fee interest to one buyer. For example, if a property owner has a $10 million property held in an LLC, they sell 50% of the interest in the LLC to one buyer and 50% to another distinct buyer with different ownership composition. No base transfer tax or additional mansion tax would be chargeable as long as no one acquires more than a 50% controlling interest.

2. Tenants In Common (TIC): Two spouses or business partners could take title to real property as tenants common (TIC). As a result, two separate tenants in common would now own property. When they are ready to sell the property, one spouse or partner could list their $5 million TIC interest for sale, and the other could list their TIC interest for $5 million.

3. Ground Lease: A real property owner might enter into a 34-year ground lease for a set sum (as long as the lease is under 35 years, there will be no change of ownership and transfer tax due)

[12] For a full list of exemptions, see question 10 of the Real Property Transfer Tax and Measure ULA FAQ.

with an option to purchase, that is only exercisable after 10 years for an additional amount. This would defer the tax if it were found to be a genuine option supported by adequate consideration and not a disguised purchase. One of the effects of the tax could be more ground lease sales or lease option contracts.

4. Seller Carry-Back: This strategy could involve a seller carry-back at a very high interest rate. For example, a seller might reduce the property sale price from $6 million to $5 million with the buyer paying a much higher interest rate. The transfer tax would be avoided, yet the seller obtains the same total rate of return.

5. Sale of Improvements: A seller might sell furnishings, personal property and removable improvements for one price—say $1 million—and the land for $5 million. The question will then become what interests are real property interests sold versus other types of property for which Measure ULA does not apply, such as exempt nonprofit properties.

6. Separate Sales of Interests: If there is a segregable easement or other servitude or other non-fee interest connected with the property, theoretically one could sell each interest separately from the rest of the property in a different sale transaction or to a different party.

7. Split Interests: In this scenario, a seller splits the property into parts owned by different legal persons or the same person. One could obtain a lot line adjustment or subdivide in advance of sale. An effect of Measure ULA could be to encourage subdivisions and lot line splits.

8. Broker's Fee: In this strategy, the buyer (and not the seller) contracts to pay the broker's fee associated with the sale so that the broker's fee does not come out of the purchase price. This could reduce the Measure ULA tax payment due by tens of thousands of dollars. The structure of listing contracts might change as a result of Measure ULA.

9. Estate Planning: The property could be transferred tax free to multiple family members or trusts. The sub-trusts or the beneficiaries might then sell their own distinct interests at under the $5 million threshold and as part of a larger sale.

Potential Negative Impact on Multi-Family Housing Development

There is a concern that the tax may be a disincentive to the construction of multi-family housing. In Los Angeles, at least 10% of the units in multi-family apartment buildings must be set aside for low-income residents. If there is a decrease in apartment construction due to the tax, then there may be loss of affordable housing over time. This is why some advocates pushed for exempting first sales within 10 years of construction so there would be no disincentive for developers to build these projects.

An October 2022 study by the Lewis Center for Regional Policy Studies at the University of California Los Angeles evaluated multi-family housing projects that could potentially be at risk due to the increased financial burden from Measure ULA. The projects "at risk" were classified as those that were valued at $5 million or more, built in a zoned area with moderate density, and had been sold within five to eight years of being completed. The researchers found that 1.8% to 4.1% of the projected completed between 2013 and 2016 met these criteria. Extrapolating to more recent production trends, this would translate to approximately 50 below-market units and 390 market-rate units per year.

Applying the ULA tax to these at-risk multi-family units sold in 2019 would have raised $26 million, with approximately $12 million available for construction subsidies. Subsidizing new housing to replace at-risk housing could cost as much as four times the revenue generated by the RETT on new apartment sales. As the authors note, “the social cost of taxing new apartment sales could be greater than the financial cost of exempting them” from the tax altogether.

Concerns About Application of Measure ULA on Full Sale Price of Property

An analysis by Alan Nobel at the University of Southern California’s Gould School of Law on Measure ULA’s efficacy and impact raised concerns about the application of the new graduated real estate transfer tax.

The graduated RETT is calculated based on the full market value of a property being sold at the time of transfer. It does not consider whether the property is being sold at a profit or loss or if it is encumbered by a deed of trust. Therefore, the tax is calculated on total market value, making it a fixed percentage of the property’s worth. This is different from property taxes that are based on a property’s assessed value. In sum, the tax is applied regardless of a property’s sale price or financial obligations.