



Appendix D

To: THA COVID-19 Emergency Operations Committee
From: Michael Mirra
Date: April 15, 2020

Subject: THA Plan to Restrict Visitors to THA's 7 Apartment Buildings for Seniors and Disabled Persons During the COVID-19 Pandemic

I write to describe THA's plan, during the COVID-19 pandemic and the Governor's "Stay Home-Stay Healthy" order, to prohibit social visitors at its 7 apartment buildings reserved for seniors and disabled persons. This memo modifies the proposal in my previous memos. The modification accounts for subsequent discussions with THA's Emergency Operations Committee (EOC) and further consultation with community partners, including Northwest Justice Project. Below, I recount the reasons for this action: the pandemic and its health risks, the Governor's prohibition of social visiting, the requests of THA's tenants and the tenant organization that we do this, the recommendation that we do this from the Tacoma-Pierce Health Department, consultations with other housing organizations, and legal research concluding that THA has the legal authority for it. I end this memo by describing how we will get this done and what it will cost.

1. SOME BACKGROUND

1.1 The Public Health Emergency

The world is living through a pandemic of a contagious respiratory virus called COVID-19. It is killing tens of thousands of people worldwide, including some in Tacoma.¹

In response, the federal government declared a public health emergency.² On February 29, 2020, Washington State's Governor Inslee issued a state-wide "State of Emergency" Proclamation 20-05 (February 29, 2020). In support of this declaration, the Governor's proclamation cited several findings, including this one:

*"Whereas, the worldwide outbreak of COVID-19 and the effects of its extreme risk of person to-person transmission throughout the United States and Washington State significantly impacts the life and health of our people, as well as the economy of Washington State, and is a **public disaster that affects life, health, property or the public peace.**"*
Id (emphasis added).

On March 17, 2020, the Tacoma City Council confirmed a state of emergency that the Mayor had proclaimed on March 12th.³

¹ As of April 7, 2020, the Tacoma Pierce County Health Department confirmed 760 people in Pierce County were infected; 14 people in Pierce County have died. <https://www.tpchd.org/healthy-people/diseases/covid-19-pierce-county-cases>

² On March 13, 2020, two days after the World Health Organization characterized COVID-19 as a "pandemic," President Trump issued Proclamation 9994 declaring a national emergency.

³ <https://cms.cityoftacoma.org/cityclerk/files/CityCouncil/Agendas/2020-VotingRecord/20200317vr.pdf>

1.2 Governor's Order Prohibiting Social Visiting

The Washington State Governor has ordered people, with limited exceptions, to stay home. He has also prohibited **all** "social visiting". His order conforms to the health directives of leading local, state and national health authorities.

As of April 8th, the Governor has issued 24 emergency proclamations related to COVID-19.⁴ These proclamations, and the directives of health authorities, impose extensive restrictions on a wide range of private activities. These activities are usually well within the legal and constitutional rights of people to do without governmental interference: work, do business, travel, worship communally, and associate with others of their choosing.

In particular, on March 23, 2020, the Governor issued Proclamation 20-25 Stay Home - Stay Healthy.⁵ With the exception of movement necessary for designated "essential" businesses and activities, the order severely restricts the movement of "all people and businesses throughout Washington":

"1. All people in Washington State shall immediately cease leaving their home or place of residence except: (1) to conduct or participate in essential activities, and/or (2) for employment in essential business services. . . ."

*"2. All people in Washington State shall immediately cease participating in all public and private gatherings and multi-person activities for social, spiritual and recreational purposes, **regardless of the number of people involved**, except as specifically identified herein. Such activity includes, but is not limited to, community, civic, public, leisure, faith-based, or sporting events; parades; concerts; festivals; conventions; fundraisers; and similar activities. This prohibition also applies to planned wedding and funeral events. This prohibition shall remain in effect until midnight on April 6, 2020, unless extended beyond that date. To implement this mandate, I hereby order that **all people in Washington State are immediately prohibited from participating in public and private gatherings of any number of people for social, spiritual and recreational purposes**. This prohibition shall not apply to activities and gatherings solely including those people who are part of a single household or residential living unit."*

[emphasis supplied]

⁴ See <https://www.governor.wa.gov/office-governor/official-actions/proclamations>.

⁵ <https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf>

The Governor’s Proclamation recognizes exceptions for “essential activities”, including:

“a. Essential activities permitted under this Proclamation are limited to the following:

“1) Obtaining necessary supplies and services for family or household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, and products necessary to maintain safety, sanitation and essential maintenance of the home or residence.

“2) Engaging in activities essential for the health and safety of family, household members and pets, including things such as seeking medical or behavioral health or emergency services and obtaining medical supplies or medication.

“3) Caring for a family member, friend, or pet in another household or residence, and to transport a family member, friend or their pet for essential health and safety activities, and to obtain necessary supplies and services.

“4) Engaging in outdoor exercise activities, such as walking, hiking, running or biking, but only if appropriate social distancing practices are used.”

Id. Even businesses that can remain open because the Governor designated them as “essential” “must establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Washington State Department of Health Guidelines.” *Id.*

The Proclamation also states that “[v]iolators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).” *Id.* This initial proclamation states that its restriction would continue until April 6, 2020. The Governor extended the restrictions until May 4, 2020. Proclamation 20.5.1 (April 2, 2020).⁶

These restrictions conform to the directives of the health authorities for everyone to keep at least 6 feet from others who are not part of the same household. See <https://www.tpchd.org/healthy-people/human-coronavirus>.

1.3 THA’s Apartment Buildings for High Risk Seniors and Disabled Persons

“Older people” and “those with chronic medical conditions including immunosuppression” are at higher risk of getting COVID-19 and, if they get it, dying. See <https://www.doh.wa.gov/Emergencies/-NovelCoronavirus-Outbreak2020COVID19/TestingforCOVID19>.

THA’s seven high rise buildings are reserved for persons age 62 years of age and older and for persons with disabilities. This means most of their occupants face this higher risk. The risk is enhanced inside an apartment building because of the close density of the apartments and the use of common entries. THA’s buildings range from about 35 apartments in three stories to 7 stories with 70 units.

⁶ <https://www.governor.wa.gov/sites/default/files/proclamations/20-25.1%20-%20COVID-19%20-%20Stay%20Home%2C%20Stay%20Healthy%20Extension%20%28tmp%29%29.pdf>

1.4 THA's Emergency Operations Plan to Keep Tenants Safe

THA's EOC has devised and implemented a detailed plan to manage a way through the pandemic. See <https://www.tacomahousing.net/coronavirus-plan>. Its most important focus is to keep THA's clients housed and safe. In THA's portfolio, including its buildings for seniors and persons with disabilities, these efforts include:

- extensive communication helping tenants understand the health directives (e.g, stay home, social distancing, hand washing);
- close of all community rooms;
- remove benches or restrict their use to one person at a time;
- restrict elevator use to two people at a time;
- twice daily sanitize all common areas and high touch surfaces (e.g, doors, door handles, elevator buttons);
- arrange food deliveries and facilitating delivery of prescription medicines so people do not have to shop for those purposes.

1.5 Tenant Compliance, Mostly; Tenants' Concern About Non-Compliance

THA's tenants have mostly complied with the directives from the Governor and the health authorities. Yet, some tenants in the buildings for seniors and disabled persons continue to host social visitors. Some tenants continue to have unauthorized residents. Unauthorized residents have always been a lease violation. Now they also violate the Governor's order. Some of these visitors and unauthorized visitors are not careful with social distancing while inside the building. These instances greatly concern other residents who fear for their own safety. Some of these other residents have asked THA to help enforce the Governor's ban on social visiting. The representative of the tenants in THA's seven buildings for seniors and persons with disabilities (TRAC Tacoma Residents Action Council) wants THA to do this for the same reason.

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2. CONSULTATION and the LAW

THA has consulted with other important voices on the necessity or value of such a ban. All favor such a ban. We also examined THA's legal authority on the question. We consulted Northwest Justice Project as well. The law allows THA to do this:

2.1 Consultation Supports the Ban or the Authority for It

THA consulted with the following:

- *Tacoma-Pierce County Health Department*
THA asked the Tacoma-Pierce County Health Department whether there is a health reason to restrict social visiting in our high-rise buildings. The Health Department replied "Yes":

*"Your question is whether there is a health reason to restrict social gatherings at this time. The answer to that question is yes. The Governor's emergency declaration addressing COVID-19 requires people to stay home unless they perform essential work and restricts all social gatherings of any size. Please see the entire declaration which is linked below. Since originally issued, this order to protect the health of the public during this pandemic was extended to May 4, 2020 and may be extended beyond that if needed."*⁷

- *Tacoma Resident Action Council (TRAC)*
On April 6th and on April 10th I spoke by telephone with the President of TRAC. TRAC represents all the tenants in THA's 7 buildings for seniors and persons with disabilities. He confirmed some problem with social visitors in the buildings and that he favors a ban. He said he would pose the question to his Board and call me back. He called me back that same day and reported that he was able to contact a majority of the Board. He conveyed the Board's request that THA to do this.
- *Other Housing Organizations*
On April 6th, I participated in regular bi-weekly COVID-19 conference calls, one with members of the Council of Large Public Housing Authorities (CLPHA), and one with the members of the Association of Washington Housing Authorities (AWHA). In each call, I canvassed the participants asking which housing authorities were restricting social visits in their properties. In the time allotted for the question on each call, about 5 housing authorities spoke up to report that they have done so. I consulted with KWA and Catholic Community Services in Tacoma. They also limit social visits in their senior and permanent supportive housing buildings. I also spoke with housing organizations that do not have such a restriction.

These consultations emphasized that, short of turning the buildings into completely secure and guarded properties, we should not expect the ability to completely stop social visitors. At best, we can expect "deterrence". But deterrence can be helpful.

⁷ Email to Michael Mirra from Nancy Sutton, April 6, 2020.

2.2 THA has the Legal Authority to Restrict Social Visitors During the Pandemic

THA has the legal authority to restrict social visitors in its apartment buildings. THA concludes this from its consideration of Washington State Landlord-Tenant law, Chap. 59.18 RCW, HUD guidance on this question, and the important overlay of the Governor’s Proclamation prohibiting social visiting. Our partners at Northwest Justice Project agree but emphasize that the terms and duration of THA’s authority to do this is limited by the terms and duration of the Governor’s Proclamation or any comparable orders that the Health Department may issue.

2.2.1 Governor’s Order

Section 1.2 above recounts the Governor’s order prohibiting social visiting. THA shares with all other people and organizations in Washington State, including landlords, the obligation to obey and to facilitate its enforcement. THA’s has a fortified obligation to do this because it is a governmental entity created by authority of state law. *See* Chap. 35.82 RCW.

2.2.2 State Landlord-Tenant Law: Chap. 59.18 RCW

State law governing landlord-tenant relations acknowledges that tenants generally have the right to determine which guests can visit, and when. However, there are limitations on this right even in normal times. Many of the limitations arise from the tenant’s responsibility for the conduct of guests to follow the same rules that govern tenants. State law also allows a landlord to forbid people who are not on the lease from living in the apartment. The law recognizes even more limitations in emergencies, especially for the purpose of safeguarding health and safety.

- *Tenant Duty to Obey Governor’s Ban on Social Visiting*
State laws require tenants to conform to the Governor’s ban on social visiting. This requirement shows in the basic recitation of the tenant duty in RCW 59.18.130 to obey the law.

“Each tenant shall . . . comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, . . .”

Id. This obligation to obey the law encompasses the Governor’s “Stay Home” order, which state law clearly authorizes him to impose. *See* RCW 43.06.220. Even if there is some serious question about whether, under RCW 59.18.130, the Governor’s proclamation counts as a “code”, “statute”, “ordinance” or “regulation” a pandemic is not the time for such fastidious speculation. For these reasons, state landlord tenant law allows a landlord to require the tenant’s compliance with the Governor’s order.

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- *Tenant Duty to Maintain a Healthy and Safe Residence*
RCW 59.18.130 imposes other duties on the tenant, each of them pertinent to this pandemic:

“(1) *Keep that part of the premises which he or she occupies and uses as **clean and sanitary** as the conditions of the premises permit; . . .*

“(5) *Not permit a **nuisance** or common waste; . . .*

“(8) *Not engage in **any activity** at the rental premises that is:
(a) **Imminently hazardous to the physical safety of other persons on the premises; . . .**”*

RCW 59.18.310(emphasis supplied).

- *Landlord Obligation to Provide Safe Housing*
RCW 59.18.060 imposes duties on the landlord to provide housing that is healthy and safe, especially under health and safety standards arising from government standards. The Governor’s proclamation would count for this purpose as well.

“(1) *Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition endangers or impairs the health or safety of the tenant; . . .*

“(3) *Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;*

“(4) *Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single-family residence, control infestation during tenancy except where such infestation is caused by the tenant; . . .*”

Id.

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- *Tenant and Landlord Duty to Show “Good Faith”*
State law requires that both tenant and landlord to show “good faith” in their performance or enforcement of duties:

*“Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes **an obligation of good faith** in its performance or enforcement.”
RCW 59.18.020 (emphasis added).*

This statutory obligation of “good faith” will fortify the law’s willingness to consider the special circumstances of a pandemic and the consequent statewide orders and health directives to give a landlord considerable latitude in defining and exercising these statutory concepts of “comply”, “regulation”, “clean”, “clean and sanitary”, “safety”, “nuisance”, “hazardous”, “reasonable” and “good faith”, especially when the landlord’s purposes are to protect tenant health.

- *HUD’s Guidance Allows PHAs to Prohibit Social Visiting*
HUD has no direct management authority over a public housing authority (PHA). But it does finance public housing and Section 8 housing (HCV) and has considerable regulatory authority, and a helpful expertise. Amid this pandemic, HUD has issued numerous directives and recommendations on how PHAs can protect health and safety in this emergency. HUD makes clear that a public housing authority can prohibit social visiting.

“PHAs have the authority to restrict visitors from public housing properties. If a PHA plans to implement a visitor ban through amended PHA policies, PIH recommends it be done as part of a broader, publicly announced plan to respond to the pandemic national emergency. PHAs should consider that residents will still need to receive essential services, such as food deliveries, medications, and personal care assistants (PCAs). For example, restrictions should track with CDC guidance and recommendations from state or local health officials. Once those policies are adopted, HUD regulations at 24 CFR 966.4(f)(4) requires tenants to abide by them.

Under the HCV program, including project-based vouchers, PHAs and owners should review the lease, state and local laws to determine the permissibility of banning visitors.⁸

In summary, THA has the legal authority to prohibit social visiting as necessary to protect health and safety during this pandemic. The Governor’s Proclamations and any directives from the Tacoma-Pierce County Health Department will be the primary sources for the scope and duration of this authority.

⁸ COVID-19 FAQs for Public Housing Authorities (March 31, 2020), section OC28, page 12.
https://www.hud.gov/sites/dfiles/PIH/documents/COVID19_FAQ_PIH_3-30-20.pdf#page=5&zoom=100,96,489

3. RESTRICTION ON SOCIAL VISITING IN THA SENIOR/DISABLED BUILDINGS

THA will impose the following restriction on social visiting in parts of its portfolio.

3.1 Restriction Only in THA's 7 Buildings for Seniors and Disabled Persons

This restriction applies **only** to THA's seven high rise apartment buildings reserved for persons who are seniors or who have disabilities.⁹

3.2 No Social Visitors or Unauthorized Occupants

Tenants shall not invite or allow visitors into the building, except for visitors necessary for the following purposes, which we adopt from the Governor Proclamation:

- (1) *Necessary Deliveries*: Delivering necessary supplies and services for family or household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, and products necessary to maintain safety, sanitation and essential maintenance of the home or residence.
- (2) *Essential Visits*: Visits essential for the health and safety of family, household members and pets, including things such as providing medical or behavioral health or emergency services and medical supplies or medication.
- (3) *Care and Transport*: Care for a family member, friend, or pet in another household or residence, and to transport a family member, friend or their pet for essential health and safety activities, and to obtain necessary supplies and services.

A violation of this limitation counts as a serious health and safety risk. The Governor's Proclamation on Evictions lists this as a permissible ground for eviction. *See* Proclamation 20-19 (March 18, 2020). In that event, THA will undertake lease enforcement.

3.3 Rules During Permitted Visits

Allowed visitors shall remain in the building only as long as necessary to accomplish the visit's permitted purpose. While in the building, visitors shall practice social distancing: stay at least 6 feet from other people; cover mouth when coughing or sneezing.

3.4 Duration of Restriction

This restriction will last until THA ends it or modifies it. To determine the duration of this rule, THA will consult further directives from the Governor and the Tacoma-Pierce County Health Department.

⁹ The restriction will not apply to the rest of THA's portfolio, for 5 reasons:

- Much of the other portfolio is not apartment buildings but townhomes, duplexes or triplexes, with separate entrances to the apartment and no interior common spaces. This means they pose a lower risk of infection.
- THA has not received requests for such a ban from tenants of these other properties.
- The residents in most of the rest of the portfolio are comprised of younger or nondisabled persons.
- Two THA properties do house mostly seniors and disabled persons: Alberta Canada Building and Prairie Oaks. THA consulted with their third-party managers. The Alberta Canada manager also lives in the building. These managers report that they have had no problem with social visits during Governor's Stay Home order. THA confirmed this with a survey of camera records showing who was entering the buildings. THA will continue to monitor these properties. If problems arise THA can extend this plan to them.
- THA does not have the staff or the money to implement such a ban in its entire portfolio.

4. **IMPLEMENTATION AND ENFORCEMENT OF THE RESTRICTION**

THA will implement this rule with the following 3 steps:

STEP 1: Communication to Tenants

- We give the letter attached to this memo to every tenant. We will do that in two ways:
 - post it on every tenant door
 - send by email to tenants whose email addresses we have
- We will also post the letter on every building entrance and in the hallways.

STEP 2: Monitoring Entries and Enforcement

Security Guard:

- Beginning Saturday, April 18th, THA will post a security guard from Pierce County Security for each of the 7 buildings, 7 days a week from 7 PM to 3 AM. [Camera records show this shift to be the busiest for social visits.] This will supplement the normal security guard that periodically visits the buildings.

This daily security service will cost \$208 to \$302 per shift per building, depending on the experience of the guard. For all 7 buildings, this will cost \$1,456 to \$2,114 per day. At these rates, the costs for the 17 days between April 18th and May 4th, when the Governor's Stay Home is presently set to expire is: **\$24,752 to \$35,938**. We will code this cost as a COVID-19 expense to make reimbursement from the federal government more likely.

- We or Pierce County Security will equip each entry guard with:
 - a desk and a chair;
 - a list of all current tenants;
 - a mask;
 - hand sanitizer;

 - log sheet to record for each encounter: date, name of visitor; name of tenant, stated purpose of visit; outcome.
- Guard protocol: *See* flow chart on next page

STEP 3: THA Periodic Review of Restriction and Its Enforcement

- The EOC will monitor how this restriction is working. To do that, it will consult:
 - guard logs;
 - record of security cameras;
 - building key holders;
 - property managers;
 - TRAC.
- THA will consider lease enforcement for violators up to and including eviction.
- The EOC will closely track any further directives from the Governor and the Health department, and end, extend, or adjust this restriction accordingly.

**SOCIAL VISIT BAN IN THA SENIOR BUILDING DURING VIRUS EMERGENCY:
SECURITY GUARD PROTOCOL**

April 15, 2020

The guard will politely greet and question every person who does not have a tenant's electronic entry key, even if the visitor has already been buzzed into the building or even if the tenant accompanies the visitor.

The guard will explain that he or she is helping THA enforce the Governor's statewide ban on social visiting to keep the tenants safe from the virus.

The guard will ask the visitor the name of the tenant s/he wishes to visit. The guard will then check for that name on the list of tenants.

If the name is not on the tenant list
NO ENTRY

If the name is on the tenant list, the guard will ask the visitor the purpose of the visit.

If the tenant does not answer
NO ENTRY

To confirm, the guard will ask the tenant (in person if the tenant is present or by buzzing the tenant) whether or not (i) the tenant wishes the delivery or visit; AND (ii) its purpose.

PERMITTED DELIVERY
If tenant confirms that the delivery is for a permitted purpose and that he or she wish to receive it, the guard will ask the tenant, if possible, to come down to the lobby to retrieve the delivery.

If tenant cannot come to the lobby, the guard will allow the delivery person to go to the apartment but only to make the delivery.

LIMITED ENTRY

The guard will judge if the stated purpose of the visit fits any of the following permitted purposes. In making this judgment, the guard will rely on the tenant's account:

- (1) *Necessary Deliveries*: Delivery of necessary supplies and services for family or household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, and products necessary to maintain safety, sanitation and essential maintenance of the home or residence.
- (2) *Essential Visits*: Visit essential for the health and safety of family, household members and pets, including things such as providing medical or behavioral health or emergency services and medical supplies or medication.
- (3) *Care and Transport*: Visit to care for a family member, friend, or pet in another household or residence, and to transport a family member, friend or their pet for essential health and safety activities, and to obtain necessary supplies and services.

PERMITTED VISIT
If tenant confirms the visitor AND its permitted purpose

ENTRY

**IF DELIVERY OR VISIT IS NOT PERMITTED
NO ENTRY**

Guard will record all encounters on the provided log sheet



Appendix D

April 15, 2020

NO SOCIAL VISITS DURING THE VIRUS EMERGENCY

Dear THA Tenant:

Tacoma Housing Authority is trying hard to keep its tenants and staff safe during the COVID-19 pandemic. To do that, THA announces a new rule for its 7 buildings for seniors and people with disabilities. This rule helps to enforce the Governor state-wide ban on social visits.

1. No more social visits.

2. Other important visits are okay:

Necessary Deliveries: Delivering necessary supplies and services for family or household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, and products necessary to maintain safety, sanitation and essential maintenance of the home or residence.

Essential Visits: Visit essential for the health and safety of family, household members and pets, including things such as providing medical or behavioral health or emergency services and medical supplies or medication.

Care and Transport: Visit to care for a family member, friend, or pet in another household or residence, and to transport a family member, friend or their pet for essential health and safety activities, and to obtain necessary supplies and services.

Every evening, THA will have a security guard at the building's front door. The guard will check with the tenant to make sure a visit is for a permitted purpose.

Breaking this rule endangers you and your neighbors. It may also lead to your eviction.

We hope you understand the reasons for this new rule. They are important:

- This new rule tries to keep you and your neighbors safe. The infection is killing people. We do not want that to happen to you or your neighbors.
- The Governor has banned all social visiting. This new rule helps to enforce that ban.
- The local Health Department and your tenant organization (TRAC) recommend this rule.

You can help keep yourself and your neighbors safe:

- Please help your neighbors understand that this rule is important.
- Please report violators to the property manager or to the guard.
- Please follow the health advice the Health Department has for everyone:
 - stay 6 feet away from others;
 - wash our hands, a lot; don't touch your face;
 - if we feel sick, stay home.

We will let you know when we can end this rule. We will decide that by listening to the Governor and the Health Department.

If you have questions or suggestions, please call your building manager.

Thank you for your help. Please stay safe!