



CITY OF NEW HAVEN

JUSTIN M. ELICKER

MAYOR

March 29, 2020

Indemnification Order FAQ

Q. What is this the Order in front of the Board of Alders?

The proposed order authorizes the Mayor to enter such agreements as are necessary to address a myriad of critical needs related to the COVID-19, including agreements that include indemnification.

Q. What does indemnification mean? How does it work?

Indemnification language in agreements obligates a party, in this case the City, to compensate (pay) another party, as example UNH, for losses or damages arising from the City's performance actions under the agreement. This means that if there were any claim against the other party to the agreement, as example UNH, the City agrees to defend that claim and to make any necessary payment, either by settlement or after a trial, to the person making the claim.

Q. Why do the Alders need to pass the Order? Why can't the Mayor just do this under the Declaration of Emergency?

Given the uncertainty with respect to the nature of risk, vendors (outside companies that do business with the City) are concerned about the potential economic exposure and are looking to the City to protect them from that risk. For example, these risks could be things such as a fire caused by our employees, injuries to employees while they are staying on the property or theft of property

Without the ability to provide certain vendors with some certainty that the City may cover the costs from some of these extremely unlikely possibilities such as these, the City may not be able to house employees such as first responders or the homeless. These people may need housing if they test positive for COVID-19, or are exposed to it, and need to be kept away from others for a period of

time. The Mayor has significant powers that have yet to be tested. It is unclear whether the Mayor can pledge the City's full faith and credit without the knowledge and consent of the City's legislative body. It is preferable, and the right thing to do, for the City's executive and legislative branches to work collaboratively in the interest of the City and its residents during this time of crisis.

Q. Who is going to be staying at the locations we indemnify?

At this time, the City contemplates housing (i) first responders or other City employees who may have been exposed to COVID-19 and do not want to risk exposing their families and (ii) homeless people who need to be isolated. Needs may change as we get further into the pandemic to the point where the City may need to offer a place of respite for COVID positive seniors or residents in general. But for now, the immediate need is for City employees and the homeless.

Q. What happens if the Board does not approve the Order?

Without the ability to provide indemnification, access to necessary resources such as lodging for City employees or the homeless may be limited, come at a much greater cost or impossible to obtain.

Q. Has the Board ever granted indemnification to others before?

Yes, the Board usually sees it wrapped up inside larger submissions like grants or certain partnerships. The most recent agreement, to my knowledge, was with Gilead. Gilead is, a California-based pharmaceutical company that is providing a grant to the City for a Health Department project. The grant was contingent upon indemnification by the City. The City also provides indemnification to the State of Connecticut with respect to its agreements and grants.

Another example are development agreements such as 100 College Street. In that matter the Board passed an agreement which contained an indemnity of the developer as regards to those parts of the development which were going to be the responsibility of the City upon completion of the development.

Q. Has the City ever required others to indemnify us?

Yes. The City's standard forms of personal services agreements and purchase orders include vendor indemnification in favor of the City. This usually occurs where the City is paying for the goods or services.

Q. What happens if something goes wrong at these properties like damage or a fire? Do we have to pay for that?

There are some protections under state law. CGS§28-13 provides for immunity from liability during a civil preparedness emergency. The Attorney General will defend the City against such claims.

Under the proposed order the City may enter into agreements that include indemnification from losses arising directly from the actions of the City or its employees – to the extent that the injured

party isn't otherwise protected by law. CGS§28-21 provides owners of property who voluntarily furnish shelter during a civil emergency with immunity from liability.

Q. Does this Order mean the Mayor can take anyone's property in City?

No, that is not the intent of this proposed order.

Q. How long does this Order last? If the Alders pass the Order will the City have to indemnify these properties forever?

The order is limited to the duration of the COVID-19 emergency and has an expiration date of 27 September 2020 unless the Board extends the date or ends it sooner. The City would only have to indemnify into the future for claims that related to the use of the facility during the crisis.

Q. How much will this indemnification cost the City and taxpayers?

Hopefully nothing. Indemnification is different than the City buying a liability insurance policy. The City is self-insured up to \$10MM