

CITY OF DECATUR, TEXAS

January 14, 2021

Judge David L. Evans
Presiding Judge Eighth Administrative Judicial Region
100 N. Calhoun 2nd Floor
Fort Worth Tx 76196

Re: Re-Certification of In-Person Operating Plans for the City of Decatur, Texas

Dear Judge Evans:

As required by the Supreme Court’s Emergency Orders and Guidance from the Office of Court Administration, I include here the required re-certification of City of Decatur Municipal Court’s In-Person Operating Plan.

I have consulted with the local public health authority regarding the local pandemic conditions and have reviewed with the health authority the previously-submitted in-person operating plan to determine whether the plan provides sufficient health and safety protocols to permit in-person proceedings. The local public health authority has determined that (check one):

- Local pandemic conditions are conducive to in-person proceedings under the precautions and protocols contained in the previously-submitted in-person operating plan; (see attached emails)
- Local pandemic conditions are conducive to in-person proceedings with modifications to the precautions and protocols in the previously-submitted in-person operating plan;
- Local pandemic conditions are not currently conducive to in-person proceedings under the precautions and protocols contained in the previously-submitted in-person operating plan.

In addition, I have conferred with the judges of the courts with courtrooms in county/municipal buildings and have determined that the following criteria will be used to determine when an in-person proceeding is necessary and when all reasonable efforts do not permit the proceeding to be conducted remotely:

All judges in the Decatur Municipal Court, before conducting an in-person hearing shall first determine if an in-person hearing is necessary by following this procedure:

1. The judge shall inform each counsel and pro se litigant that the hearing shall be conducted remotely over Zoom. The judge shall provide each counsel and pro se litigant a phone number or email address to inform the judge if they believe any counsel, their clients, a pro se litigant, any witness, an interpreter, or any other participant (all referred to below as “Participant”) cannot participate remotely. The judge or judge’s staff shall then determine whether a Participant is unable to participate in the hearing due to any one or more of the following:

- a. lack of technology which precludes or impedes their ability to participate in the hearing via the Zoom videoconferencing app. Examples of the lack of such technology include:
 - i. lack of access to a computer tablet or other device with internet video capability;
 - ii. lack of access to a cell phone; or
 - iii. lack of access to an internet connection.
 - b. A physical, mental, or other disability that prevents a Participant from being able to effectively operate or utilize the required technology. Examples of such a disability include:
 - i. a physical or mental disability that precludes them from effectively operating the technology necessary to access the Zoom videoconferencing app;
 - ii. a physical disability that precludes them from effectively seeing, hearing, or otherwise participating in a Zoom video hearing;
 - iii. the lack of or unavailability of an interpreter who can assist the individual in communicating during a Zoom hearing;
 - iv. incarceration and the incarcerating facility's lack of technological resources or facilities to allow the inmate to participate remotely in the hearing or confer privately with the inmate's legal counsel; or
 - v. if the proceeding is in a specialty court defined by Title 2, Subtitle K of the Texas Government Code (e.g. veteran's court, mental health court, drug court, etc), the specialty court team determines that there is a risk to the physical or mental well-being of a participant in the specialty court program if the proceeding is not held in person.
 - c. A confrontation clause constitutional objection is raised by criminal defense counsel or a pro se litigant, and the judge sustains the objection after conducting a *Haggard*¹ analysis.
 - d. A proceeding where one Participants needs to appear in person due to a need to provide fingerprints, is subject to incarceration, or must meet with multiple departments as a result of the court proceeding, in which case that party may need to appear while the other parties appear remotely.
2. If an individual is unable to participate for one of these reasons, prior to holding an in-person hearing, the judge shall make reasonable efforts to accommodate the individual as set forth in the procedure below.

When an individual is found to be unable to participate in a Zoom videoconference for one of the reasons stated above, prior to holding an in-person hearing, the judge considering the in-person hearing shall make all reasonable efforts to make accommodations that will allow the individual(s) to participate. The accommodations that the judges of the County/Municipal Court shall consider include:

1. When an individual does not have adequate technological resources on their own to participate in a Zoom videoconferencing hearing, a judge shall:
 - a. determine whether the court has the ability to provide the individual with a laptop or other device which would allow the individual to participate in the hearing from some segregated location within the court facility while following appropriate COVID-19 precautions and protocols;
 - b. determine if such technological resources can be provided to the individual by some other source (e.g. a participating attorney, a party, a family member, friend, public

¹ *Haggard v. State*, 2020 WL 7233672 (Tex. Crim. App. 2020)

library, or an appropriate agency of the State of Texas); and

- c. determine whether the individual could participate in a meaningful manner by telephone (audio only).
2. When an individual has physical or mental disabilities that would prevent the individual from operating the technology required, a judge shall:
 - a. determine if the individual has legal counsel, family or friends who can assist in operating the required technology; and
 - b. inquire as to what, if any, accommodations could be made which would allow the individual with a disability to participate.
3. When an individual is incarcerated, a judge shall:
 - a. determine whether the facility has the technological resources or facilities to allow the incarcerated individual to participate in the hearing;
 - b. if the facility does not have the technological resources to allow the inmate to participate in a Zoom videoconference, determine whether the inmate could participate in a meaningful manner by telephone (audio only).
4. When an individual is otherwise unable to participate in a hearing via videoconference or by audio only, a judge shall determine whether the individual can effectively participate in the proceeding by a sworn statement made out of court as permitted by the Emergency Orders of the Supreme Court of Texas.
5. If no accommodation is available, the judge shall determine if a continuance is warranted, balancing the risk to public health and safety with the need to resolve the particular case.
6. If no accommodation is available and the judge determines a continuance is not warranted, the judge may permit the hearing to occur in-person under the precautions and protocols in the approved in-person operating plan.

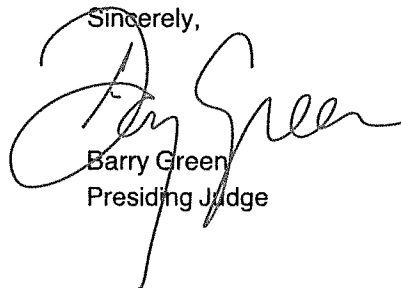
Having completed the required re-certification, I am submitting it to you in your role as Regional Presiding Judge. I understand and have communicated to the judges with courtrooms in county/municipal facilities that no in-person hearings will be permitted on or after January 11 until I receive an acknowledgement from you that the re-certification meets the requirements of OCA's Guidance.

Re-Certification Approved



David L. Evans
Presiding Judge
Eighth Administrative Judicial Region
January 22, 2021

Sincerely,



Barry Green
Presiding Judge



Barry Green <catchall.123@gmail.com>

Operating Plan for Municipal Courts

Barry Green <barry@barrysgreen.com>

Tue, Jan 5, 2021 at 11:58 AM

To: "Walker MD, Jon" <jwalker@wisehealthsystem.com>

Cc: mayor@decaturtx.org, Dianna Faulkenberry <dfaulkenberry@decaturtx.org>

Dr. Walker:

Last June, as the Local Health Authority for Wise County, you were kind enough to approve the Operating Plan for the Municipal Court of the City of Decatur, Wise County, Texas. This plan, of course, concerned procedures to protect the public and participants during any court proceedings in light of the COVID-19 pandemic. We have worked under and enforced that plan since that time.

Since a few months have passed, the State of Texas is now asking all Municipal Courts to inquire with the Local Health Authority whether "Local pandemic conditions are conducive to in-person proceedings under the precautions and protocols contained in the previously submitted in person operating plan". If in your judgment they are, a simple confirmation reply to this email would suffice.

Thank you for all your help and assistance. The City and myself greatly appreciate it.

Sincerely,

Barry Green
Decatur Municipal Judge

[Quoted text hidden]



Barry Green <catchall.123@gmail.com>

Operating Plan for Municipal Courts

Walker MD, Jon <jwalker@wisehealthsystem.com>

Thu, Jan 7, 2021 at 2:07 PM

To: Barry Green <barry@barrysgreen.com>

Cc: "mayor@decaturtx.org" <mayor@decaturtx.org>, Dianna Faulkenberry <dfaulkenberry@decaturtx.org>

Judge Green,

This is a confirmation that the precautions and protocols as set forth in the Operating Plan for the Municipal Court of the City of Decatur are conducive to in-person proceedings when necessary.

Please feel free to contact me at any time for concerns.

Jon W. Walker MD

Local Health Authority

Wise County, Texas

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