

David L. Evans

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Presiding Judge
Eighth Administrative Judicial Region
January 23, 2021



Aubrey Municipal Court, 107 S. Main Street, Aubrey, TX 76227

1/11/2021

Re: Re-Certification of In-Person Operating Plans

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 The City of Aubrey 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.¹ 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;
- Local pandemic conditions are conducive to in-person proceedings with modifications to the precautions and protocols in the previously-submitted in-person operating plan;²
- 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 Aubrey 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")

¹ Documentation of the consultation can be accomplished by submitting this letter stating such or an email or letter from the local public health authority.

² If it is determined that the previously-submitted in-person operating plan needs to be modified, the local administrative district judge or presiding judge of the municipal court should submit the modified plan after following the process detailed on p. 3 of the [Guidance for All Court Proceedings During COVID-19 Pandemic](#).

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;³
 - 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;⁴ 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*⁵ analysis.
 - d. A proceeding where one Participant 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 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:

³ If a Spanish interpreter is needed, please consider using OCA's free Spanish interpretation service. More information and scheduling options is available at <https://www.txcourts.gov/tcris/>.

⁴ If the facility is a TDCJ facility, judges should contact coronavirus@txcourts.gov to see if OCA can assist with getting the facility connected with the court.

⁵ *Haggard v. State*, 2020 WL 7233672 (Tex. Crim. App. 2020)

- 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 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 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.

I've attached the Modified Operating Plan that was submitted and approved by the Denton County Health Authority and complies with all the above referenced criteria.

Sincerely,



Art Maldonado
Presiding Judge

COVID-19 Operating Plan Aubrey Municipal Court

Recognizing the need to ensure the health and safety of litigants, attorneys, visitors, court staff, judges, and other individuals entering the buildings housing the courts, the courts of Aubrey will implement the following protective measures:

General

1. All judges will comply with the Emergency Orders issued by the Supreme Court of Texas and Court of Criminal Appeals, including conducting in-person proceedings according to the guidance issued by the Office of Court Administration regarding social distancing, maximum group size, and other restrictions and precautions.
2. All judges will use all reasonable efforts to conduct proceedings remotely.
3. The presiding judge of the municipal court will maintain regular communication with the local health authority and mayor and adjust this operating plan as necessary with conditions in the city.
4. Judges will begin setting in-person proceedings only as a last resort.

Judge and Court Staff Health

1. Judges and court staff who can perform the essential functions of their job remotely will telework when possible or work staggered days and hours in the event social distancing is not feasible in the workplace.
2. Judges and Court Staff Monitoring Recommendations: Self-monitor for signs and symptoms of COVID-19 and report when sick or experiencing symptoms of COVID-19.
3. Judges or court staff who feel feverish or have measured temperatures equal to or greater than 99.6°F, or with new or worsening signs or symptoms of COVID-19 such as cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, sore throat, loss of taste or smell, diarrhea, or having known close contact with a person who is confirmed to have COVID-19 will not be permitted to enter the building and should seek medical advice.
4. It is required that Judges and court staff wear face coverings for courtroom hearings, practice social distancing, and practice appropriate hygiene recommendations at all times.
5. Protective Measures:
 - a. Sanitizer will be placed at door entrance(s) and interior doors will remain propped open, if applicable, to avoid contact with handles,
 - b. Staff and Visitors will be strongly encouraged to sanitize their hands and required to wear masks upon entry to the courtroom,
 - c. A one-way flow for entry and exit into the courtroom will be designated to maintain appropriate distancing to avoid face-to-face contact. It will be monitored by a Bailiff.
 - d. Social distancing signage will be placed in the courthouse.
 - e. Signatures will be required only if necessary,

- f. Personal contact will be kept to a minimum by providing give away pens if signatures are required or pens will be sanitized after individual use,
- g. No more than 10 Defendants will be scheduled for any in-person court proceedings in time intervals that will maintain social distancing and Courtroom capacity,
- h. Docket Notices will have a check-in procedure that does not require face-to-face contact and the Defendant will be notified by the same manner as to when it is safe to enter the Courthouse,
- i. Defendants will be encouraged to enter alone subject to the Open Court Provision wherein reasonable accommodations will be made,
- j. It is required that the Bailiff wear personal protective equipment during the security check,
- k. Seating in the Courtroom will be separated at a minimum distance of 6',
- l. Defendants will not approach the bench or court Staff closer than 6',
- m. Documents will be transmitted to the service counter for signature, if necessary, and retrieval,
- n. Without a personal appearance (phone, mail, email or website), any Defendants in the Vulnerable Population will be given an opportunity to schedule an alternative method for appearance or reschedule their case(s) until it is deemed safe.

Scheduling

In an effort to reduce the number of defendants required to make an appearance in court, the Aubrey Municipal Court will do the following:

1. All reasonable efforts are being made to conduct remote proceedings.
2. Standing Orders allow clerks to process certain paperwork outside of the courtroom.
3. The Court website has been updated to encourage appearances be made by email, mail, phone or drop box.
4. Requests and submittals may be submitted by mail or email to avoid in-person contact.
5. Documentation will be reviewed by the Judge outside of the courtroom.
6. Cases are reviewed by the prosecutor prior to court to determine if a plea offer may be mailed/emailed to the defendant and/or attorney representing the defendant.
7. The Judge has modified or suspended any and all deadlines and procedures prescribed by statute, rule, or order for a stated period ending no later than 30 days after the [Governor's State of Disaster](#) has been lifted.
8. In-person proceedings may be necessary for inability of parties to participate due to a disability or lack of technology.
9. If in-person appearances are necessary, courtroom dockets will be held with no more than 10 Defendants set on any docket and reasonable accommodations will be allowed to comply with the Open Courts Provision.

Vulnerable Populations

1. Individuals who are over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune systems are compromised such as by chemotherapy for cancer or other conditions requiring such therapy are considered to be vulnerable populations.
2. Each judge will include information on orders setting hearings, dockets notices, and in other communications notifying individuals who are in vulnerable populations of the ability to contact the court to identify themselves as a vulnerable individual and receive accommodations. A notice with this information will be posted on the court's website, at the clerks' windows, and upon the courtroom entry door (a copy of which is attached).
3. Vulnerable populations who are scheduled for court will be accommodated by allowing them, without a personal appearance (phone, mail, email or website), to schedule an alternative method for appearance (Video or Phone Conference) or reschedule their case(s).

Social Distancing

1. All persons not from the same household who are permitted in the court building will be required to maintain adequate social distancing of at least 6 feet.
2. Each restroom has been evaluated to determine the appropriate capacity to ensure social distancing and the maximum capacity has been posted on each restroom door.

Gallery

3. The maximum number of persons permitted in the gallery of each courtroom has been determined and posted. The maximum capacity of the courtroom will be monitored and enforced by court staff.
4. The gallery of the courtroom has been marked to identify appropriate social distancing in the seating. Seating is limited to every other row.

Well

5. In the courtroom, the counsel tables, witness stand, judge's bench, clerk(s), and bailiff seating have been arranged in such a way so that there is social distancing of at least 6 feet between each space.

Hygiene

1. Hand sanitizer dispensers have been placed at the lobby and courtroom entrances.
2. Tissues have been placed near the door of the courtroom, at counsel tables, at the witness stand, on the judges' benches, and in the hallways.
3. The Department of State Health Service's "Stop the Spread of Germs Flyer" has been posted in the lobby area as well as at the courtroom entrance.

Screening

1. It is recommended when individuals attempt to enter the courtroom, the Bailiff and/or city employee ask the individuals if they are (1) feeling feverish or a measured temperature greater than or equal to 99.6 °F; (2) have a cough; (3) shortness of breath; (4) have been in close contact with a person who is lab confirmed to have COVID-19; (5) repeated shaking with chills; (6) headaches; (7) sore throat; (8) new loss of taste or smell; (9) diarrhea; (10) muscle pain; (11) or chills. Individuals who indicate yes to any of these questions will be refused admittance to the court building.
2. When individuals attempt to enter the courtroom, the Bailiff and/or city employee will use an infrared

thermometer to determine the temperature of the individual. Individuals whose temperature equals or exceeds 99.6°F will be refused admittance to the court building.

3. Staff who are screening individuals entering the courtroom will be provided personal protective equipment, including face masks and/or shields, disposable gloves and hand sanitizer.

Face Coverings

1. All individuals entering the courtroom will be required to wear face coverings at all times.
2. Individuals will be encouraged to bring cloth face coverings with them, but if the individual does not have a cloth face covering, a disposable face mask will be provided.

Cleaning

1. Court building cleaning staff will clean the common areas of the court building so that common spaces are cleaned at least every 24 hours.
2. The courtroom will be cleaned by a cleaning staff before proceedings are held.
3. Court building cleaning staff have been provided cleaning supplies shown to be effective with this coronavirus.
4. Court building cleaning staff have been trained on proper cleaning techniques and provided appropriate personal protective equipment.
5. During window transactions and courtroom proceedings, court staff will monitor for the need to disinfect/clean any surface that may potentially come in contact with more than one person and ensure it is disinfected/cleaned properly.

I have attempted to confer with all judges of courts with courtrooms in the court building regarding this Operating Plan. In developing the plan, I consulted with the local health authority and mayor, documentation of which is attached to this plan. I will ensure that the judges of courts with courtrooms in the court building covered by this Operating Plan conduct proceedings consistent with the plan.

Date: 01/06/2021



Presiding Judge of Municipal Court



Leading our communities to a healthier future.

01/06/2021

Art Maldonado
Presiding Judge
City of Aubrey Municipal Court

Judge,

I endorse and approve your COVID-19 Operating plan for Aubrey Municipal Court, as forwarded to me on 1/5/21.

Sincerely,

Marty Buchanan, MD, PhD
Health Authority/ Medical Director
Denton County Public Health
marty.buchanan@dentoncounty.gov