

OFFICE OF THE MUNICIPAL COURT

CITY OF KERRVILLE

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**In the Municipal Court for the City of Kerrville,
State of Texas**

ORDER No. 2021-1-7

**COVID-19 Revised Emergency Operating Plan for the Kerrville Municipal Court
To Be Effective after January 11, 2021**

This Operating Plan is a Procedural Order of the Court, entered in compliance with the "Guidance for All Court Proceedings During Covid-19 Pandemic" issued by the Office of Court Administration of the State of Texas on December 31, 2020. Said "Guidance" is attached hereto, incorporated by reference herein, and made a part hereof for all purposes.

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 Kerrville 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

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.

- 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 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 Kerrville 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 by telephone or 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;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
 - 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's* analysis.

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](#).

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)

- 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 telephonic or 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 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.

Recognizing the need to ensure the health and safety of litigants, attorneys, visitors, court staff, judges, and other individuals entering the building housing the court, the **Kerrville Municipal Court** will implement the following protective measures for in-person proceedings, only after the above determinations have been made:

General

1. All judges will comply with the Emergency Orders issued by the Supreme Court of Texas and Court of Criminal Appeals, as may be amended, 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 Fire Chief and adjust this Operating Plan as necessary with local conditions.
4. Judges will begin setting non-essential in-person proceedings no sooner than February 1, 2021, subject to further delay if circumstances warrant, pursuant to further order of the undersigned Presiding Judge, local or state health advisories, further guidance by the Office of Court Administration, and local ordinance or directive of the Kerrville City Council.
5. Bench trial settings will resume no sooner than February 1, 2021, subject to further delay if circumstances warrant, pursuant to further order of the undersigned Presiding Judge, local or state health advisories, further guidance by the Office of Court Administration, and local ordinance or directive of the Kerrville City Council.
6. Jury trial settings will resume no sooner than March 1, 2021, subject to further delay if circumstances warrant, pursuant to further order of the undersigned Presiding Judge, local or state health advisories, further guidance by the Office of Court Administration, and local ordinance or directive of the Kerrville City Council.
7. There will be no Inmates transported from the jail to the court building.

Judge and Court Staff Health

1. Judges who can perform the essential functions of their job remotely will telework when possible.
2. Judges and Court Staff Monitoring Requirements: Court staff must take temperature and notify Municipal Court Administrator before entering the building. Judges and Prosecutor will be screened at the door before entrance is allowed in the court building.
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. Judges and court staff will be required to wear face coverings during times designated for conducting in-person proceedings in Municipal Court, and when members of the public have in-person meetings with Judges or court personnel. Judges and court staff will also be required to practice social distancing, and practice appropriate hygiene recommendations at all times.
5. Protective Measures: Court staff working the service window are separated from the public by a glass window. Staff has been provided with hand sanitizer, sanitizing wipes, gloves, and masks for their work station. Hand sanitizer stations are in place in the lobby area of the courtroom. Notices of how to handle cases without having to appear in court will be mailed to individuals.

Scheduling

Under its revised emergency operating procedures, dated June 26, 2020, the Court was scheduling fifteen cases every hour, which because of numerous failures to appear, resulted in long gaps of time without any cases being heard, and a waste of judicial resources. Therefore, the following court schedules are established to reduce occupancy in the court building but still to promote judicial economy and efficiency:

1. To reduce the number of individuals entering the court building, staff will be scheduling all conferences, appearances, arraignments, compliance hearings, etc., for telephonic hearings only. Staff will schedule ten (10) cases every hour for telephonic appearance. It is assumed that because of anticipated failures to appear, there will more than likely be no more than eight (8) cases actually handled every hour.
2. Individuals will be allowed to speak with the Judge or the Prosecutor or both during that time, or may take care of their case with the Clerk if applicable under the current standing orders.
3. For any in-person appearances, to be set only in accord with the procedures outlined above, only one defendant will be allowed in the courtroom at one time. Witnesses and staff may be admitted at the direction of the City Marshal or other bailiff, so long as appropriate distancing can be maintained, and they shall at all times be under the direction of said Marshal or bailiff concerning their movements and spacing.
4. Only four individuals will be allowed to wait in the lobby area at any given time.
5. If more than 4 individuals are present in the lobby or attempting to gain admission to the lobby at any time, the excess number will be asked to wait outside or in their vehicles until called to come into the building.

Vulnerable/At Risk Populations

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 that are compromised such as by chemotherapy for cancer or other conditions requiring such therapy are considered to be vulnerable/at risk populations.

1. Each judge will include information on orders setting hearings, notices, and in other communications notifying individuals who are in vulnerable/at risk populations of the ability to contact the court to identify themselves as a vulnerable/at risk individual and receive accommodations. A notice with this information will be posted on the court's website and in conspicuous locations around the court building.
2. Vulnerable/at risk populations who are not able to appear telephonically or by video will be informed that their cases will be continued until conditions permit them to attend without risk to themselves and the public.
3. The court staff will also designate a separate docket for the vulnerable/at risk population on a case-by-case basis for those who would like to appear for court.

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 six feet.
2. Each restroom has been evaluated to determine the appropriate capacity to ensure social distancing. There is one men's stall and one women's stall restroom located in the lobby area.
3. There are no halls or elevators in the Kerrville Municipal Court building.
4. The court office will have signage posted to maintain six feet social distance, and will have floor markers indicating six feet social distance.

Gallery

1. 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.
2. The gallery of the courtroom has been marked to identify appropriate social distancing in the seating.

Well

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

Hygiene

1. Hand sanitizer dispensers have been placed at the clerk's windows, judges' bench and outside of bathrooms.
2. Tissues have been placed near the door of the courtroom and on the judges' bench.
3. The Department of State Health Service, "Stop the Spread of Germs Flyer" has been posted in multiple locations within the court building.

Screening

1. When individuals attempt to enter the court building, the bailiff will ask the individuals if they are feeling feverish; have a cough, shortness of breath, or difficulty breathing; or have been in close contact with a person who is confirmed to have COVID-19. Individuals who indicate yes to any of these questions will be refused admittance to the court building and provided with information as to a follow up date or alternative setting.
2. Staff who are screening individuals entering the court building will be provided face masks and gloves.

Face Coverings

1. During times designated for conducting in-person proceedings in Municipal Court, and when members of the public have in-person meetings with judges or court personnel, all individuals entering the court building will be required to wear face coverings at all times.
2. Individuals will be encouraged to bring cloth face coverings with them.


Cleaning

1. Supervisor on duty will clean the common areas of the court building so that common spaces are cleaned at least every 30 minutes and in between hearings.
2. Court building custodians will clean the courtroom after each court date.
3. Court staff has been provided cleaning supplies shown to be effective with this coronavirus.


I have attempted to confer with all Judges subject to this Operating Plan. In developing the plan, I consulted with the local health authority and Mayor of the City of Kerrville, documentation of which is attached to this plan. I will ensure that the Judges covered by this Operating Plan conduct proceedings consistent with the plan.

Having completed the required re-certification, I, the undersigned presiding judge of the Kerrville Municipal Court, am submitting this order to the Honorable Steven B. Ables, 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 the Regional Presiding Judge that the re-certification meets the requirements of OCA's Guidance.

Signed and entered on this the 8th day of January
2021.


Mark Prislovsky, Presiding Judge
City of Kerrville Municipal Court

Reviewed and Approved on the 10 day of Jan, 2021:


Hon. Steven B. Ables, Presiding Judge, Sixth Administrative Judicial Region