



October 20, 2011

Re: Declaration of Local Disaster – Including Additional Authority Regarding Regulation of Fireworks

Dear County Judges:

Texas Government Code Chapter 418 gives the county judge the power to declare a local disaster within the county under certain circumstances. A "Disaster" is defined for these purposes under Section 418.004(1) as:

... the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency.

The county judge's authority is set out in Section 418.108. A declaration issued under this section may include a prohibition or restriction on the sale or use of all fireworks within the county. This specific grant of authority to the county judge is broader than, and independent of, the commissioners court's authority under §352.051 of the Local Government Code to restrict or prohibit certain fireworks during designated fireworks seasons. For example, unlike a commissioners court order related to the July or December fireworks seasons, a disaster declaration may be issued at any time. In addition, a disaster declaration may restrict all types of fireworks.

Once the county judge has issued a disaster declaration, the procedure to ratify it may involve two steps. The commissioners court must take action to consent to the continuance or renewal of a local disaster declaration within seven days after its issuance or it expires. Additionally, if a disaster declaration includes a restriction on fireworks that exceeds the restrictions authorized by Local Government Code §352.051, the county judge must request and obtain authorization from the governor within 60 hours of its issuance or the broader restriction on fireworks will automatically expire. The authorizations by the commissioners court and the governor are independent of

one another – the county judge may request approval from the governor immediately upon issuance of the disaster declaration and before the commissioners court has met to take action on the matter.

The county may enforce a penalty of a fine not to exceed \$1,000 or confinement in jail for a term not to exceed 180 days for a failure to comply with a disaster declaration, but only if the county's emergency management plan includes a provision establishing an offense under Government Code §418.173. If the county wants the ability to enforce this penalty, its emergency management plan should provide that a failure to comply with the plan, or a rule or order adopted under the plan is punishable as authorized in Government Code §418.173.

A copy of Government Code Section 418.108 and a sample disaster declaration related to the risk of wildfires and restricting the use of fireworks are enclosed. If you have any questions, please contact the Legal Department toll-free at 888-275-8224.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen C. Gladney".

Karen C. Gladney  
General Counsel

Enclosures (2)

## Texas Government Code

### § 418.108. Declaration of Local Disaster

(a) Except as provided by Subsection (e), the presiding officer of the governing body of a political subdivision may declare a local state of disaster.

(b) A declaration of local disaster may not be continued or renewed for a period of more than seven days except with the consent of the governing body of the political subdivision or the joint board as provided by Subsection (e), as applicable.

(c) An order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary, the county clerk, or the joint board's official records, as applicable.

(d) A declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration. The appropriate preparedness and response aspects of the plans are activated as provided in the plans and take effect immediately after the local state of disaster is declared.

(e) The chief administrative officer of a joint board has exclusive authority to declare that a local state of disaster exists within the boundaries of an airport operated or controlled by the joint board, regardless of whether the airport is located in or outside the boundaries of a political subdivision.

(f) The county judge or the mayor of a municipality may order the evacuation of all or part of the population from a stricken or threatened area under the jurisdiction and authority of the county judge or mayor if the county judge or mayor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.

(g) The county judge or the mayor of a municipality may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area.

(h) For purposes of Subsections (f) and (g):

(1) the jurisdiction and authority of the county judge includes the incorporated and unincorporated areas of the county; and

(2) to the extent of a conflict between decisions of the county judge and the mayor, the decision of the county judge prevails.

(i) A declaration under this section may include a restriction that exceeds a restriction authorized by Section 352.051, Local Government Code. A restriction that exceeds a restriction authorized by Section 352.051, Local Government Code, is effective only:

(1) for 60 hours unless extended by the governor; and

(2) if the county judge requests the governor to grant an extension of the restriction.

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

**DISASTER DECLARATION RELATED TO RISK OF WILDFIRES**

WHEREAS, \_\_\_\_\_ County has not had rainfall for an extended period of time, creating hot and dry conditions; and

WHEREAS, the hot and dry conditions pose the threat of large, dangerous and fast moving wildfires; and

WHEREAS, such fires have the potential of endangering lives and damaging property on a large scale; and

WHEREAS, the Texas Government Code Chapter 418 gives the county judge the power to declare a local disaster within the county "if the threat of disaster is imminent"; and

WHEREAS, the magnitude of the potential damage and the rapidity with which such a fire could escalate to major proportions constitute an imminent threat of disaster; and

WHEREAS, declaration of such disaster authorizes the imposition of controls on activities which tend to increase the likelihood of fires; and

WHEREAS, such controls, once implemented, have the potential of protecting lives and property by mitigating the threat of dangerous fires; and

WHEREAS, a declaration issued under Section 418.108 of the Texas Government Code may include a prohibition or restriction on the sale or use of all fireworks within the county; and

WHEREAS, a local disaster declaration expires seven days after its issuance, unless the commissioners court consents to its renewal or continuance; and

WHEREAS, to the extent that a declaration includes a restriction on fireworks, any part that exceeds the restrictions authorized by Local Government Code § 352.051 is only effective for 60 hours, unless the county judge requests and the governor authorizes an extension of the broader fireworks restriction.

BE IT THEREFORE PROCLAIMED that I, \_\_\_\_\_, County Judge of \_\_\_\_\_ County, declare a local state of disaster based on the threat of large wildfires in \_\_\_\_\_ County, Texas.

BE IT ALSO PROCLAIMED that this state of disaster will continue until rescinded in accordance with the above cited statute, but in no instance will this declaration continue for more than seven days without being authorized by the County Commissioners Court, or in the event the declaration pertains to fireworks, no more than 60 hours unless an extension of the restriction on fireworks has been received from the governor.

BE IT ALSO PROCLAIMED that the purpose of this order is the mitigation of the hazard posed by wildfires by curtailing the practice of outdoor burning, and the sale and use of all fireworks, which purpose is to be taken into account in any enforcement action based upon this order.

BE IT ALSO PROCLAIMED that a violation of this Disaster Declaration is punishable as a Class C misdemeanor by a fine not to exceed \$500.00 or as authorized by Government Code §418.173 and adopted in the county's emergency plan by a fine not to exceed \$1,000.00 or confinement in jail for a term not to exceed 180 days, whichever is greater.

This declaration shall be promptly publicized and filed with the County Clerk.

IN WITNESS WHEREOF, I affix my signature this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
County Judge

Filed with the Clerk of \_\_\_\_\_ County on \_\_\_\_\_, 2011.