



April 9, 2012

Re: Regulating Fireworks

Dear County Judges:

Local Government Code, § 352.051 authorizes the commissioners court to adopt an order regulating certain fireworks in the unincorporated areas of the county under drought conditions. The statute provides that the order must be adopted before June 15th, of each year for the July fireworks season. The Texas Forest Service has determined that drought conditions exist in certain areas of the state. The Texas Forest Service may declare drought conditions in other counties in the upcoming weeks.

If your county is designated a drought area, and your court wishes to adopt such an order, action must be taken before the deadline. To determine whether your county is designated a drought area, please visit the Texas Interagency Coordination Center website at <http://www.tamu.edu/ticc/> or call Tom Spencer of the Texas Forest Service at 979/458-6530. The Texas Forest Service has developed new drought weblinks to assist your county in monitoring drought conditions more closely.

If the court decides to adopt an order, the order may prohibit or restrict the sale or use of "restricted fireworks", which are defined as "skyrockets with sticks" as classified in 49 Code of Federal Regulations, § 173.100(r)(2) in effect on October 1, 1986 and as missiles with fins. A violation of the order is a Class C misdemeanor. Also, a citizen can file suit for an injunction to prevent a violation or threatened violation of the order. An order issued by your court based on a Texas Forest Service determination will expire when the Texas Forest Service finds that your county is no longer in a drought condition.

Under Local Government Code § 352.051(f), the county may also designate one or more "safe" areas where the use of restricted fireworks is not prohibited. In my opinion, the county may also designate a specific date or dates on which fireworks are permitted in the "safe" areas. In determining if an area may be considered "safe" the court should take into account whether adequate public safety and fire protection services are provided to the area.

We are enclosing a copy of Local Government Code § 352.051, the portions of the Occupation Code that define and explain permitted and prohibited fireworks, and a sample prohibitory order for your convenience. Copies of the 1986 and 1996 Federal regulations referenced in the state law are available on request or on-line at www.County.Org at the Online Resources – Legal Resources menu under Legal Publications. If your court decides to designate “safe” areas, the order will need to be modified to include appropriate language. 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 (3)

Texas Local Government Code § 352.051

§ 352.051. Regulation of Restricted Fireworks

(a) For the purposes of this section the following definitions shall apply:

(1) "Restricted fireworks" means only those items classified under 49 C.F.R. Sec. 173.100(r)(2) (10-1-86 edition), as "skyrockets with sticks" and "missiles with fins".

(2) "Drought conditions" means the existence immediately preceding or during the fireworks season of a Keetch-Byram Drought Index of 575 or greater.

(b) (1) The Texas Forest Service in the ordinary course of its activities shall determine whether drought conditions, as defined under Subsection (a)(2), exist on average in any county requesting such a determination. The Texas Forest Service shall make available the measurement index guidelines used to determine whether drought conditions exist in a particular area. Following any determination that such drought conditions exist, the Texas Forest Service shall notify said county or counties when such drought conditions no longer exist. The Texas Forest Service shall make its services available each day during the Fourth of July and December fireworks seasons to respond to the request of any county for a determination whether drought conditions exist on average in the county.

(2) The Texas Forest Service shall be allowed to take such donations of equipment or funds as necessary to aid in the carrying out of this section.

(c) Upon a determination under this section that drought conditions exist on average in a specified county, the commissioners court of the county by order may prohibit or restrict the sale or use of restricted fireworks in the unincorporated area of the county. In addition, during the December fireworks season, the commissioners court of a county by order may restrict or prohibit the sale or use of restricted fireworks in specified areas when conditions on rural acreage in the county not under cultivation for a period of at least 12 months are determined to be extremely hazardous for the danger of fire because of high grass or dry vegetation.

(d) To facilitate compliance with an order adopted under Subsection (c), the order must be adopted before:

(1) April 25 of each year for the Cinco de Mayo fireworks season;

(2) June 15 of each year for the Fourth of July fireworks season; and

(3) December 15 of each year for each December fireworks season.

(e) An order issued under this section shall expire upon determination as provided under Subsection (b) that such drought conditions no longer exist.

(f) When a county issues an order restricting or prohibiting the sale or use of restricted fireworks under this section, the county may designate one or more areas of appropriate size and accessibility in the county as safe areas where the use of restricted fireworks is not prohibited, and the legislature encourages a county to designate such an area for that purpose. The safe area may be provided by the county, a municipality within the county, or an individual, business, or corporation. A safe area may be designated in and provided in the geographic area of the regulatory jurisdiction of a municipality if the activity conducted in the safe area is authorized by general law or a municipal regulation or ordinance. An area is considered safe if adequate public safety and fire protection services are provided to the area. A county, municipality, individual, business, or corporation is not liable for injuries or damages resulting from the designation, maintenance, or use of the safe area.

(g) A person selling any type of fireworks, including restricted fireworks, in a county that has adopted an order under Subsection (c) shall, at every location at which the person sells fireworks in the county, provide reasonable notice of the order and reasonable notice of any location designated under Subsection (f) as a safe area.

(h) An affected party is entitled to injunctive relief to prevent the violation or threatened violation of a requirement or prohibition established by an order adopted under this section.

(i) A person commits an offense if the person knowingly or intentionally violates a prohibition established by an order issued under this section. An offense under this subsection is a Class C misdemeanor.

(j) A civil action against a county based on the county's actions under this section must be brought in the appropriate court in that county.

Texas Occupations Code Chapter 2154

Sec. 2154.001. Definitions. In this chapter:

(5) "Fireworks" means a composition or device:

(A) designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation; and

(B) defined by 49 C.F.R. Section 173.56(j) (1996).

(6) "Fireworks 1.3G" means a large fireworks device:

(A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and

(B) classified as a 1.3G explosive by the department in 49 C.F.R. Part 173 (1996).

(7) "Fireworks 1.4G" means a small fireworks device:

(A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation;

(B) that complies with the construction, labeling, and chemical composition requirements of the United States Consumer Product Safety Commission in 16 C.F.R. Part 1507 (1996), or the most recently adopted version of that rule; and

(C) that is classified by the department in 49 C.F.R. Part 173 (1996).

(8) "Illegal fireworks" means a fireworks device manufactured, distributed, or sold in violation of this chapter.

Sec. 2154.003. Permissible Fireworks.

(a) Except as provided by Subsection (b), Fireworks 1.4G are permissible fireworks.

(b) The following are not permissible fireworks:

(1) sky rockets or "bottle rockets" with:

(A) a total propellant charge of less than four grams;

(B) a casing size of less than five-eighths of an inch for the outside diameter and less than 3-1/2 inches in length; and

(C) an overall length, including stick, of less than 15 inches; and

(2) other fireworks determined not acceptable by the United States Consumer Product Safety Commission.

(c) The term "bottle rocket" may not be used in association with the advertisement or sale of fireworks.

(d) In addition to the items described by Subsection (b), pop rockets with a propellant casing length of less than five inches, an exterior diameter of less than three-fourths of an inch, and an overall total rocket length of less than 26 inches are not permissible fireworks.

STATE OF TEXAS §
 §
COUNTY OF _____§

ORDER [PROHIBITING OR RESTRICTING] CERTAIN FIREWORKS
IN UNINCORPORATED AREAS OF _____ COUNTY, TEXAS

WHEREAS, the Texas Forest Service has determined that drought conditions exist in
_____ County; and

WHEREAS, on the ____ of _____, 2012, the Commissioners Court of _____
County has determined that the normal danger of fire in the unincorporated areas of
_____ County is greatly enhanced by the extremely dry conditions now existing;

NOW, THEREFORE, the Commissioners Court of _____ County adopts this Order
[prohibiting OR restricting] the sale or use of restricted fireworks in the unincorporated
areas of _____ County.

- A. A person may not sell, detonate, ignite, or in any way use fireworks classified as
"skyrockets with sticks" under 49 C.F.R. part. 173.100(r)(2) (10-01-86 edition) or
missiles with fins in any portion of the unincorporated areas of _____ County.
- B. [Describe specific restrictions, if applicable.]
- C. This Order does not prohibit "permissible fireworks" as authorized in
Occupations Code Section 2154.003(a).
- D. A person commits an offense if the person knowingly or intentionally violates a
prohibition established by this Order. An offense under this order is a Class C.
Misdemeanor.

APPROVED this the ____ day of _____, 2012, by the _____ County
Commissioners Court.

COUNTY JUDGE

Attest: _____
CLERK

DROUGHT ORDER

