



CINCO DE MAYO FIREWORKS PERIOD

(MAY 1-MIDNIGHT, MAY 5)

DEADLINE TO ADOPT ORDER: APRIL 24, 2019

Occupations Code, §2154.202(g)(3), permits the commissioners court of a county that is not more than 100 miles from the Texas-Mexico border to adopt an order authorizing the sale of fireworks for Cinco de Mayo (May 5).

If the court decides to permit sale of fireworks during the Cinco de Mayo period, the order must be adopted before April 25. If the court does not wish to permit the sale of fireworks during this period, no action is required.

Please note the distinction between Occupations Code, §2154.202(g)(3), which **allows** the commissioners court at its **discretion** to **permit** fireworks sales for the Cinco de Mayo period and other law [Local Government Code §352.051 and Occupations Code, §§2154.202(g)(1) & (2)] which **require** the court to take action to **restrict or prohibit** sales during certain times of the year if drought conditions are present.

To assist the court in determining whether conditions are suitable for authorizing the sale of fireworks, the Texas Forest Service is required to make its services available each day during the Cinco de Mayo period to respond to the request of a county as to whether or not drought conditions exist. To obtain a determination from the Texas Forest Service, call (979) 458-7331.

If the court decides to adopt such an order for Cinco de Mayo, it may **restrict or prohibit** the sale of "restricted fireworks," which are defined as "skyrockets with sticks" and as "missiles with fins". A violation of the order is a Class C misdemeanor. Also, a citizen may file suit for an injunction to prevent a violation or threatened violation of the order.

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 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.

A sample order authorizing sale of fireworks during this period is provided on the following page. If your court decides to designate "safe" areas, the sample order will need to be modified to include appropriate language. A map identifying the counties within 100 miles of the Texas-Mexico border, a copy of Local Government Code §352.051, the sections of the Occupations Code that define and explain permitted and prohibited fireworks, and the Federal Regulations referenced in the state law are available online at county.org/fireworks. If you have any questions, please contact the TAC Legal Department at (888)275-8224.

STATE OF TEXAS
COUNTY OF _____

SAMPLE ORDER AUTHORIZING CINCO DE MAYO FIREWORKS SALES

WHEREAS, the Commissioners Court of _____ County is authorized under Occupations Code Section 2154.202(g)(3), to issue an order allowing retail fireworks permit holders to sell fireworks to the public in celebration of Cinco de Mayo; and

WHEREAS, on the ___ day of _____, 2019, the Commissioners Court of _____ County has determined that conditions are favorable to issue such an Order;

NOW, THEREFORE, the Commissioners Court of _____ County adopts this Order authorizing the sale of fireworks to the public by retail fireworks permit holders during the Cinco de Mayo period beginning May 1, 2019 and ending at midnight May 5, 2019, subject to the following restrictions:

- a. This order expires on the date the Texas Fire Service determines drought conditions exist in the county or midnight, May 5, 2019, whichever is earlier.
- b. [Describe specific restrictions, if applicable]

Approved this the ___ day of _____, 2019, by the _____ County Commissioners Court.

County Judge