

Executive Order No. 227



2009 JUN 30 PM 2:30  
JOY STREATER  
COMAL COUNTY CLERK

RECEIVED

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EXECUTIVE ORDER PROHIBITING THE SALE, DISPENSING, USE, AND  
TRANSPORTATION OF "RESTRICTED FIREWORKS"

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WHEREAS, by Declaration of Local Disaster for Comal County, Texas (herein after referred to as "Comal County Declaration") issued **June 30<sup>th</sup>, 2009, at 2:00 a.m./p.m.**, the County Judge of Comal County declared a local state of disaster for Comal County, Texas, resulting from:

**WILDFIRES DUE TO DROUGHT, DRY VEGETATION, WIND, AND OTHER WEATHER RELATED CONDITIONS**, Declaration of Local Disaster incorporated herein by reference; and

WHEREAS, Section 418.004(1) of the Texas Government Code defines **disaster** to be 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;" and

WHEREAS, Sections 418.108 of the Texas Government Code authorizes the County Judge to declare a local state of disaster; and

WHEREAS, Section 418.108(i) of the Texas Government Code authorizes the County Judge to include in his declaration of disaster prohibitions that exceed the restrictions authorized by Section 352.051 of the Texas Local Government Code; and

WHEREAS, Section 418.108(i) of the Texas Government Code mandates that an Executive Order, pursuant to a Declaration of a Local Disaster, restricting the sale, use, and transportation, namely a restriction exceeding Section 352.051 of the Texas Local Government Code, is effective only for 60 hours unless extended by the Governor;

WHEREAS, Section 352.051 of the Texas Local Government Code defines “[r]estricted fireworks” as “those items classified under 49 C.F.R. § 173.100(r)(2)(10-1-86 edition), as ‘skyrockets with sticks’ and ‘missiles with fins;’”

WHEREAS, the Comal County Fire Marshal Wayne Ellington has submitted an affidavit requesting the issuance of a Declaration of Local Disaster for Comal County stating that:

“[o]n June 29, 2009, the KBDI registered at 671, with Sunday at 666 and Saturday at 660. The KBDI in some areas of Comal County is as high as 755. The National Weather Service is still predicting high temperatures for the next few days to be in the low to mid 100s, with some temperatures between 102 and 104 for the past few days. The National Weather Service Forecast indicated a 20% chance of rain on Monday, 40% chance on Tuesday, and 20% chance on Wednesday. The “Community Collaborative Rain, Hail, & Snow Network” ([www.cocorahs.org](http://www.cocorahs.org)) showed no significant amount of precipitation in the unincorporated parts of the county for the past 24 hour period.” See Affidavit of Fire Marshal attached as **Exhibit 1**.

Additionally, the Fire Marshal states:

“[w]ith the high grasses that remain from this spring, the lack of precipitation, exceptionally high heat, and with the KBDI at 677, I am very concerned that multiple grassfires will result in Comal County with the existing conditions coupled with restricted fireworks. I believe Comal County is in imminent threat of widespread and severe damage, injury or loss of life or property resulting from natural conditions which include fire and drought. Accordingly and in my professional opinion based on my experience and training, I recommend County Judge Danny Scheel ban the sale and use of “Restricted Fireworks,” namely, “skyrockets with sticks” and “missiles with fins.” *Id.*

WHEREAS, the Keetch-Byram Drought Index (KBDI) mean reading for Comal County, Texas is 677 and the fourteen (14) day outlook predicting the KBDI to register between 700 to 800 putting Comal County in **EXTREME conditions, with the predicted average at 725**, attached as **Exhibits 2 & 3** hereto and incorporated herein by reference; and

WHEREAS, the Community Collaborative Rain, Hail & Snow Network forecasts no significant amount of precipitation in the unincorporated area of Comal County, attached as **Exhibit 4** hereto and incorporated herein by reference; and

WHEREAS, the National Weather Service forecasts 30 percent chance of precipitation in the unincorporated area of Comal County in the past twenty-four (24) hours, attached as **Exhibit 5** hereto and incorporated herein by reference; and

WHEREAS, the Comal County Commissioners Court issued Order No. 225 Prohibiting Outdoor Burning ("Burn Ban") on June 18, 2009, and said Order and prohibition on outdoor burning is still in effect, incorporated herein by reference; and

**WHEREAS, due to the disaster conditions as cited herein the County Judge of Comal County must protect the health, safety and welfare of the County's citizens.**

**NOW THEREFORE IT IS HEREBY ORDERED, pursuant to the authority granted in the Texas Disaster Act of Chapter 418 Texas Government Code and Section 352.051 of the Texas Local Government Code, the following regulations shall take effect immediately upon issuance of this Order and shall remain in effect until the state of disaster is terminated or extended:**

**THE SALE, DISPENSING, TRANSPORTATION, AND USE OF RESTRICTED FIREWORKS "SKYROCKETS WITH STICKS" AND "MISSILES WITH FINS" AS DEFINED IN SECTIONS 352.051(a)(1) OF THE TEXAS LOCAL GOVERNMENT CODE AND 173.100(r)(2) OF THE TEXAS OCCUPATIONS CODE (10-1-86 edition) IS PROHIBITED.**

In accordance with Section 418.108(i) of the Texas Government Code and Section 352.051 of the Texas Local Government Code, a person who knowingly or intentionally violates this order commits a Class C misdemeanor, punishable by a fine of up to \$500.00.

In accordance with Section 418.108(i) of the Texas Government Code and Section 352.051 of the Texas Local Government Code, an affected party is entitled to injunctive relief to prevent the violation or threatened violation of a requirement or prohibition established by this Order.

**This Executive Order shall take effect immediately from and after its issuance, ORDERED AND SIGNED at 2:00 a.m./p.m. THIS 30<sup>th</sup> DAY OF JUNE, 2009.**



Danny Scheel  
Comal County Judge