

Executive Order No. 270



EXECUTIVE ORDER PROHIBITING THE SALE, DISPENSING, USE, AND
TRANSPORTATION OF 1.4 g FIREWORKS

WHEREAS, by Declaration of Local Disaster for Comal County, Texas (herein after referred to as "Comal County Declaration") issued **June 15th, 2011, at 9:00 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, the Texas Occupations Code Section 2154.001(7) defines Fireworks 1.4G as "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);” and

WHEREAS, the Texas Occupations Code Section 2154.202(g) authorizes retail fireworks permit holders to sell fireworks to the public only beginning June 24th and ending at midnight on July 4th of the same year; and

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:

“[t]his information shows that when the county is experiencing a high KBDI, the amount of grass fires increase. On the other hand if the county has a very low KBDI, there are very few grass fires. When the county has a high KBDI and prohibits the use and sale of 1.4g fireworks and restricts/prohibits the use of other outdoor combustible materials, the number of fires is drastically reduced. The KBDI 14 day outlook puts the mean reading at 746 Comal County, the max 757 and the minimum 730. The KBDI has a max reading of 800.” See Exhibit 1 attached hereto and incorporated herein by reference.

Furthermore, the Fire Marshal states:

“With the high grasses that remain from last spring, and with the KBDI at 714 or higher, I am very concerned about the multiple grassfires that may result in Comal County with the existing conditions. I believe Comal County is in imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural condition including fire and drought. Accordingly and in my professional opinion based on my experience and training, I recommend County Judge Sherman Krause ban the sale, use, dispensing, and transportation of 1.4g fireworks. I further recommend that the County Judge restrict outdoor welding to require a safety plan to be issued by the Fire Marshal’s Office, and restrict outdoor cooking with an open flame to allow only the use of barbeque pits and similar devices which are manufactured with a lid that when closed will contain all open flame and for cooking use only in accordance with safety precautions.”
Id.

WHEREAS, Bracken Fire Assistant Chief William Anz has submitted an affidavit stating that he “strongly recommend County Judge Krause declare a local state of disaster, suspend the sale and use of small fireworks (1.4g) and regulate the use of other types of flammable and combustible materials so I can do my best to protect this Community in the state of drought we are experiencing at this time,” attached as Exhibit 2 hereto and incorporated herein by reference; and

Additionally, Assistant Chief Anz states:

“Large portions of Bracken’s service area do not have hydrants, and subsequently are extremely vulnerable to wildland fire. If the 4th of July 2011 holiday were to

experience high winds, coupled with the current extreme dryness, we could easily experience a fireworks-oriented fire growing rapidly out of control and threaten property and the lives throughout the area. Additionally, one or more large fires in addition to the normal increase in EMS calls during the 4th of July 2011 holiday would leave all property owners and citizens dangerously exposed while most firefighting assets are committed to wildland firefighting efforts. Area departments would also be overextended and limited in their ability to provide the mutual assistance that area departments depend upon.” *Id.*

WHEREAS, Bulverde Fire Department Lieutenant Ruben Z. Lopez has submitted an affidavit requesting the issuance of a Local Disaster for Comal County stating that:

“The current conditions exist for a disastrous fire in Comal County. Grass is tall and dry and with many residents unfamiliar with urban/wildland interface and how fast a grassfire can spread, adding fireworks to the mix could be disastrous to both life and property. We have responded to 14 grass fires since January 1, 2011. We have the resources available if we have a major wildland fire in the county, but would be unable to respond to every day calls for service.” See Exhibit 3 Affidavit of Lt. Ruben Z. Lopez attached hereto and incorporated herein by reference.

Furthermore, Lt. Lopez states:

“I am concerned that the general public does not realize the pressure all departments face over the holiday season. If no action is taken for the July 4th holiday there could be a disaster. I urge County Judge Krause declare a local state of disaster, ban small fireworks (1.4g), regulate outdoor welding and the use of combustible/explosive materials to protect this community.” *Id.*

WHEREAS, Canyon Lake Fire Chief Shawn Wherry has submitted an affidavit requesting the issuance of a local state of disaster for Comal County stating that “[i]n my professional opinion and experience I recommend Judge Sherman Krause exercise his authority to issue a local state of disaster and issue a complete ban of the use, sale, and transportation of fireworks, regulate outdoor welding, and the use of combustible/explosive materials to protect this community,” attached as Exhibit 4 hereto and incorporated herein by reference; and

Additionally, Chief Wherry states:

“In my 20+ years of fire service for this area, the current drought conditions are nearly as bad as I have ever seen and experienced. Our current KBDI is 712 and is rising at an approximate rate of 3-4 points per day. I consider the drought conditions worse than during the 2009 4th of July season. I staffed 6 extra personnel on July 4th due to the increased threat of campers having cooking fires and other activities. Additionally, I was concerned that people would purchase fireworks in another county that did allow the sale of fireworks and then

discharge the fireworks in Comal County. As a result of the Judge's Order, my department only responded to 28 fires and 101 EMS calls for the time period of June 23, 2008 through July 6, 2008. Had fireworks been legal to use, we would have had even more calls and fires. We have seen firsthand the effectiveness of the Disaster Declaration." *Id.*

Furthermore, Chief Wherry states:

"My department has limited resources considering the 250 square mile area we cover. I have 13 fulltime personnel per shift. Each shift works 24 hours on-call and 48 hours off. I have four engines, four brush trucks, three tankers, and four ambulances. My staff is dual trained to provide both fire and EMS services. As a result of this dual training, if a shift responds to a grassfire, this precludes my department from responding to an EMS call until we finish the grassfire." *Id.*

WHEREAS, Spring Branch Fire Department's Fire Chief Dustin Beaudoin has submitted an affidavit requesting the issuance of a Local Disaster for Comal County stating that he is "highly concerned about the upcoming 4th of July holiday because of the possibilities of fires which could lead to injuries and property loss. I strongly recommend the County Judge to issue a disaster declaration banning the sale, use and transportation of fireworks in Comal County, Texas." See Exhibit 5 Affidavit of Fire Chief Dustin Beaudoin attached hereto and incorporated herein by reference.

Additionally, Chief Beaudoin states:

"Our service area is the northwestern part of the County, which is approximately half residential and half wildlands; however, the wildland and residential development is not separate and is intermingled, which creates substantial life-safety concerns for fast-spreading grassfires. With areas becoming more urban interfaced, many more homes and lives are in danger. Also, there has been an increase in both the number of homes and the value of homes in the area, which creates a higher risk for greater property loss." *Id.*

"Further, our service area is 126 square miles. This makes it difficult when we have multiple fires throughout our region and tasks our available resources. If we are out on multiple grassfires, we will not be able to adequately protect our service area from structure fires and accidents. The vast area covered is increasingly hard to control fires because of the hill country terrain, mildly interspersed with heavy stands of cedar, oaks, mesquite, inaccessible rocky terrain, and waste-high dead grass." *Id.*

"Another main concern is the lack of water in the area. The majority of our service area is without fire hydrants. Only approximately 25% of our service area has fire hydrants. This causes delays in getting water to the brush trucks which, therefore, increases the amount of time and acreage that grassfires burn." *Id.*

WHEREAS, City of New Braunfels Fire Marshal Patrick O'Connell has submitted an affidavit requesting the issuance of a Local Disaster for Comal County stating that:

“In my professional experience, training, and history with fire fighting in communities with large areas of natural vegetation, the current drought conditions facing Comal County, combined with the unseasonably high temperatures and no significant rainfall in the forecast, creates the very real possibility of a devastating wildfire. All vegetation is extremely dry, with crisp, dry, dead grasses exacerbating the threat of a fast moving wildland fire.” See Exhibit 6 attached hereto and incorporated herein by reference.

Furthermore, Marshal Patrick O'Connell states:

“I am familiar with the Texas Disaster Act's definition of a “disaster” and consider our County to be experiencing a “disaster” by virtue of the fact that we are experiencing 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...wind...[or]..drought.” Section 418.004(1) of the Texas Government Code.” *Id.*

“I strongly urge County Judge Krause declare a local state of disaster for Comal County due to the wildfires we have experienced, the drought conditions we are experiencing, the dry vegetation on the ground, days with strong winds, along with the other disastrous weather conditions we are experiencing. In my professional opinion and experience, the disastrous conditions this threat will only be exacerbated if people are allowed to utilize outdoor welding, use explosives or combustible materials without regulation and proper fire safety plans in place. I also believe that if people are allowed to use fireworks during the current drought conditions we will experience the devastating threat of multiple buildings and persons being hurt or killed due to the rapid number of wildland fires and the limited resources of the City of New Braunfels, County of Comal, along with our surrounding Counties' current limited resources (Hays and Guadalupe).” *Id.*

WHEREAS, as of June 14, 2011 the Keetch-Byram Drought Index (KBDI) mean reading for Comal County, Texas is 728 and the fourteen (14) day outlook predicting the KBDI to register between 700 to 800 putting Comal County in **EXTREME conditions**, attached as Exhibits 7 & 8 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 9 hereto and incorporated herein by reference; and

WHEREAS, the National Weather Service forecasts no significant amount of precipitation in the unincorporated area of Comal County in the past twenty-four (24) hours, attached as Exhibit 10 hereto and incorporated herein by reference; and

WHEREAS, the Comal County Commissioners Court issued Order No. 268 to Prohibit Outdoor Burning ("Burn Ban") on May 19, 2011, and said Order and prohibition on outdoor burning is still in effect; and

WHEREAS, the Comal County Commissioners Court issued Order No. 269 to Prohibit the sale or use of restricted fireworks in the unincorporated areas of Comal County pursuant to §352.051 of the Texas Local Government Code on June 9, 2011, and said Order and prohibition is still in effect; and

WHEREAS, the County Judge Sherman Krause issued a Disaster Declaration due to "drought conditions" pursuant to Section 418.108 of the Government Code on June 15, 2011, and said Order is still in effect, incorporated 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 FIREWORKS WITH A 1.4G RATING AS DEFINED IN SECTION 2154.001(7) OF THE TEXAS OCCUPATIONS CODE 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 9:00 a.m./p.m. THIS 15th DAY OF JUNE, 2011.



SHERMAN KRAUSE
Comal County Judge