



# Order

BY THE

## Commissioners Court of Tyler County

MARTIN NASH  
Commissioner, Pct. 1

RUSTY HUGHES  
Commissioner, Pct. 2

JACQUES L. BLANCHETTE  
County Judge

MIKE MARSHALL  
Commissioner, Pct. 3

JACK WALSTON  
Commissioner, Pct. 4

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STATE OF TEXAS  
COUNTY OF TYLER

### ORDER AUTHORIZING SAN JACINTO DAY FIREWORKS SALES

**WHEREAS**, the Commissioners Court of Tyler County is authorized under Occupations Code Section 2154.202(h)(1), to issue an order allowing retail fireworks permit holders to sell fireworks to the public in celebration of Texas Independence Day; and

**WHEREAS**, on the 23rd day of March, 2017, the Commissioners Court of Tyler County has determined that conditions are favorable to issue such an Order;

**NOW, THEREFORE**, the Commissioners Court of Tyler County adopts this Order authorizing the sale of fireworks to the public by retail fireworks permit holders during the Texas Independence Day period beginning April 16 and ending at midnight April 21, 2017, 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, April 21, 2017, whichever is earlier.

**ADOPTED** this the 23rd day of March, 2017 by a vote of \_\_\_ ayes and \_\_\_ nays.

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JACQUES L. BLANCHETTE  
County Judge, Tyler County

Attested by:

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DONECE GREGORY  
County Clerk, Tyler County



**SAN JACINTO DAY FIREWORKS PERIOD  
(APRIL 16-MIDNIGHT, APRIL 21)  
DEADLINE TO ORDER: MARCH 31, 2016**

Dear County Judges:

Occupations Code, §2154.202(h), permits the commissioners court to adopt an order authorizing the sale of fireworks for San Jacinto Day (April 21).

**If the court decides to permit sale of fireworks during this period, the order must be adopted before April 1 for the San Jacinto Day period. If the court does not wish to permit the sale of fireworks during this period, no action is required.**

Please note the distinction between this new law (Occupations Code, §2154.202(h)), which **allows** the commissioners court at its **discretion** to **permit** fireworks sales for the holiday period and the prior law which **requires** 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 San Jacinto Day 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 San Jacinto Day, 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.

We are enclosing a copy of Local Government Code §352.051, the portions of the Occupations Code that define and explain permitted and prohibited fireworks, and a sample order authorizing sale of fireworks during this period for your convenience. Copies of the Federal Regulations referenced in the state law are available on request or online at [www.county.org/fireworks](http://www.county.org/fireworks). If your court decides to designate “safe” areas, the sample order will need to be modified to include appropriate language. If you have any questions, please contact the TAC Legal Department at 888-275-8224.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen C. Gladney", with a long horizontal flourish extending to the right.

Karen C. Gladney  
General Counsel

Enclosures (3)

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

**SAMPLE ORDER AUTHORIZING SAN JACINTO DAY FIREWORKS SALES**

WHEREAS, the Commissioners Court of \_\_\_\_\_ County is authorized under Occupations Code Section 2154.202(h)(1), to issue an order allowing retail fireworks permit holders to sell fireworks to the public in celebration of San Jacinto Day; and

WHEREAS, on the \_\_\_ day of \_\_\_\_\_, 2016, 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 San Jacinto Day period beginning April 16, 2016 and ending at midnight April 21, 2016, 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, April 21, 2016, whichever is earlier.
- b. [Describe specific restrictions, if applicable]

Approved this the \_\_\_ day of \_\_\_\_\_, 2016, by the \_\_\_\_\_ County Commissioners Court.

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

V.T.C.A., Local Government Code § 352.051

§ 352.051. Regulation of Restricted Fireworks

Effective: September 1, 2015

(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 Texas Independence Day, San Jacinto Day, Memorial Day, 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) February 15 of each year for the Texas Independence Day fireworks season;
- (2) April 1 of each year for the San Jacinto Day fireworks season;
- (3) April 25 of each year for the Cinco de Mayo fireworks season;
- (4) May 15 of each year for the Memorial Day fireworks season;
- (5) June 15 of each year for the Fourth of July fireworks season; and
- (6) 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.

## Credits

Added by Acts 1991, 72nd Leg., ch. 865, § 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 500, § 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1399, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1244, §§ 1 to 3, eff. Sept. 1, 1999. Renumbered from § 240.904 by Acts 2001, 77th Leg., ch. 1420, § 12.004, eff. Sept. 1, 2001. Acts 2007, 80th Leg., ch. 1179, § 7, eff. June 15, 2007. Amended by Acts 2015, 84th Leg., ch. 710 (H.B. 1150), §§ 2, 3, eff. Sept. 1, 2015.

V. T. C. A., Local Government Code § 352.051, TX LOCAL GOVT § 352.051

Current through the end of the 2015 Regular Session of the 84th Legislature

V.T.C.A., Occupations Code § 2154.202

§ 2154.202. Retail Fireworks Permit

Effective: September 1, 2015

(a) A person selling fireworks directly to the public must annually obtain a nonrenewable retail fireworks permit for each retail location.

(b) The commissioner shall set and collect a retail fireworks permit fee in an amount not to exceed \$20.

(c) A retail fireworks permit may be purchased from a licensed manufacturer, distributor, or jobber or from the state fire marshal's office.

(d) A licensed manufacturer, distributor, or jobber may obtain retail fireworks permits from the commissioner at any time. The commissioner shall provide permits in books containing 20 permits each. Each permit must be clearly printed with the year, date, and permit number. The manufacturer, distributor, or jobber shall keep a record of all permits issued and shall submit the record to the commissioner through the state fire marshal in the manner required by the commissioner.

(e) A retail fireworks permit expires on January 31 each year and is not renewable.

(f) An outdated permit may be exchanged for a current permit only in the year following the permit's expiration.

(g) Except as provided by Subsection (h), a retail fireworks permit holder may sell fireworks only to the public, and only during periods:

(1) beginning June 24 and ending at midnight on July 4;

(2) beginning December 20 and ending at midnight on January 1 of the following year; and

(3) beginning May 1 and ending at midnight on May 5 if the fireworks are sold at a location that is not more than 100 miles from the Texas-Mexico border and that is in a county in which the commissioner's court of the county has approved the sale of fireworks during the period.

(h) In addition to the periods during which the sale of fireworks is authorized under Subsection (g), the commissioner's court of a county by order may allow a retail fireworks permit holder to sell fireworks in that county only to the public and only during one or more of the following periods:



- (1) beginning February 25 and ending at midnight on March 2;
- (2) beginning April 16 and ending at midnight on April 21; and
- (3) beginning the Wednesday before the last Monday in May and ending at midnight on the last Monday in May.

**Credits**

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2007, 80th Leg., ch. 1179, § 3, eff. June 15, 2007; Acts 2015, 84th Leg., ch. 710 (H.B. 1150), § 1, eff. Sept. 1, 2015.

V. T. C. A., Occupations Code § 2154.202, TX OCC § 2154.202

Current through the end of the 2015 Regular Session of the 84th Legislature