



TAC Legal

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April 6, 2020

A county's statutory authority to permit fireworks has not been suspended by the Governor at this time. However, the Governor's [most recent order](#) and many current local orders do not include fireworks sales as an essential service. We encourage you to discuss these and any other legal questions with your county attorney.

Memorial Day Fireworks Period

(May 22 - Midnight, May 27)

Deadline to adopt order: May 14, 2020

Occupations Code, §2154.202(h), permits the commissioners court to adopt an order authorizing the sale of fireworks for Memorial Day (May 27).

If the court decides to permit sale of fireworks during the Memorial Day period, the order must be adopted before May 15. 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 law (Occupations Code, §2154.202(h)), which **allows** the commissioners court at its **discretion** to **permit** fireworks sales for the holiday period and the other law (Local Government Code, §352.051) 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 A&M Forest Service is required to make its services available each day during the Memorial 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 A&M Forest Service, call (979) 458-7331.

If the court decides to adopt such an order for Memorial 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.

A sample order authorizing sale of fireworks during this period, a copy of Local Government Code §352.051, and the portions of the Occupations Code that define and explain permitted and prohibited fireworks are available online at 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.

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