

SUBCHAPTER C. FIREWORKS

§ 352.051. REGULATION OF RESTRICTED FIREWORKS. (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. § 173.100(r)(2) (10-1-86 edition), as "skyrockets with sticks" and "missiles with fins".

(2) "Drought conditions" shall mean the existence immediately preceding or during the fireworks season of a long-term deficit of moisture creating atypically severe conditions with increased wildfire occurrence as defined by the Texas Forest Service through the use of the Keetch-Byram Drought Index, or when such index is not available, through a comparable measurement which takes into consideration the burning index, spread component, or ignition component for that particular area.

(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 in all or part of any county requesting such determination. The Texas Forest Service shall make available the measurement index guidelines that determine whether a particular area is in drought condition. 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.

(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 within all or part of a specified county, the commissioners court of such county by order may prohibit or restrict the sale or use of restricted fireworks in all or a portion of the unincorporated area of the county where drought conditions have been determined to exist. 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) June 15 of each year for the Fourth of July fireworks season; and

(2) 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) 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. 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.

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.