

Executive Order No. 229



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JOY STREATER
COMAL COUNTY CLERK

EXECUTIVE ORDER REGARDING RESTRICTED USE OF COMBUSTIBLE
MATERIALS

WHEREAS, by Declaration of Local Disaster for Comal County, Texas (herein after referred to as "Comal County Declaration") issued July 1st, 2009, at 1:00 a.m.(p.m.), the County Judge of Comal County declared a local 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, Chapter 418 of the Texas Government Code authorizes a County Judge to restrict the use of combustible materials pursuant to a Declaration of Local Disaster; and

WHEREAS, Section 418.108(b) of the Texas Government Code mandates that an Executive Order, pursuant to a Declaration of a Local Disaster, restricting the use of combustible materials local disaster may not be continued or renewed for a period of more than seven days except with the consent of the Comal County Commissioners Court;

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 734 Comal County, the max 777 and the minimum 675. The KBDI has a max reading of 800.” See Exhibit 1 attached to Executive Order 228 and incorporated herein by reference.

Additionally, the Fire Marshal states:

“In drought conditions like these, 1.4 g fireworks are “uncontrollable.” 1.4g fireworks do not have the licensing, inspecting, purchasing, and use requirements associated with 1.3g fireworks. Additionally, the use of 1.4g fireworks are normally used all over the County (567 square miles). The users of 1.4g fireworks are not educated, trained, or licensed to ensure the proper use. With the use of 1.4g fireworks it is impossible for us to ensure there are safety features such as, fire trucks, fire watches, fire extinguishers, and a safety site review. Some of these fireworks have properties that are unpredictable, i.e. ground affects, where the user is unaware and unable to avoid disastrous effects (bumblebee, chaser, whistlers, blacksnakes, smoke bombs, ect.). Whereas, 1.3g fireworks typically discharge straight-up at a higher altitude that allows any embers to extinguish before they come to the ground.” *Id.*

Additionally, the Fire Marshal states:

“I consider Judge Scheel’s Disaster Declarations and Executive Orders on June 23, 2008 and December 17, 2008, successes to the protection of life and property in Comal County. With the Declaration in effect, the unincorporated area of the county only experienced 1 grassfire on December 31, 2008 which was quickly extinguished by the homeowner prior to first responders arriving. Likewise, the unincorporated area of the county only experienced 3 grassfires on July 4, 2008, despite the KBDI being 693. With no Declaration in place, on December 31, 2007, the KBDI was 598 and the unincorporated area of the county experienced approximately 65 grassfires.” *Id.*

Furthermore, the Fire Marshal reports:

“In my professional opinion and experience most of the grass fires that occur when the county has a high KBDI are caused by “out of control burns,” 1.4g fireworks and exterior welding. The Commissioners Court has instated the burn ban that will take care of the control burns. Additionally, the County Judge banned restricted fireworks. However, it is crucial for the safety of the citizens in

Comal County if a ban on the use and sale of all 1.4g fireworks (small) was instated. I would also suggest that anyone planning to use any type of heat source that could start a grassfire must contact the Fire Marshal's office so I can ensure they have the proper safety plan for the conditions in the county. Some of the possible safety plan measures I will be recommending include saturation of the surrounding ground area with adequate moisture, utilization of adequate personnel to observe and handle the resulting effects from the use of explosive or combustible material, preparation of the ground area to prevent and remove large amounts of cured grass, and fire suppression devices." *Id.*

With the high grasses that remain from last spring, and with the KBDI at 672 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 Danny Scheel ban the sale, use, dispensing, and transportation of 1.4g fireworks and exterior welding." *Id.*

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 Emergency Management Coordinator Carol Edgett has submitted an affidavit requesting the issuance of a local disaster for Comal County stating that:

"[a]n extreme and imminent fire hazard currently exists in Comal County. Tall vegetation in open rangeland and other areas is approximately 3 foot tall. This tall vegetation across the county creates a tremendous fuel load should it be ignited." See **Exhibit 2** attached to Executive Order 228 and incorporated herein by reference.

Additionally, the Emergency Management Coordinator states:

"In December 2005, June 2008, and December 2008, Comal County made Disaster Declarations Due to Wildfire Threats. The situation was very bad during that time. Conditions are very similar to both 2008 declarations in that the fuel

load is present, we have a lack of precipitation or possibility of receiving precipitation and the KBDI is in the upper 600 range. Each day, the KBDI reading for Comal County continues to rise with the current reading of 666 as of June 28. As of June 28, 2009 the 14 day Forecast is projecting a KBDI mean of 724, and the KBDI scale only goes to 800." *Id.*

It is "[m]y recommendation for the Comal County Judge, in light of the extreme fire conditions and threat to the community, is implementation of all measures necessary to protect the health, safety and welfare of all Comal County residents, including property during this critical drought and wildfire threat." *Id.*

WHEREAS, Bracken Fire Chief Donald Zipp has submitted an affidavit stating that he "strongly recommend County Judge Scheel 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 3** attached to Executive Order 228 and incorporated herein by reference; and

Additionally, Chief Zipp 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 2009 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 2009 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.*

"In current conditions, the grass is crisp from being overly dry and with the high temperatures and high winds, we are in imminent threat of having a large, fast moving wildland fire in Comal County. The likelihood of loss of life or property is very high in Comal County with the limited resources." *Id.*

WHEREAS, Bulverde Fire Department Lieutenant Wayne Schultze 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 17 grass fires since January 1, 2009. 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 4 Affidavit of Lt. Wayne Schultze attached to Executive Order 228 and incorporated herein by reference.

Additionally, Lieutenant Schultze states:

“Homes are spread out with large ranches throughout the area. Our department is tasked with protecting and battling grass fires with our limited resources. If fireworks are allowed this year along with unregulated outdoor welding or the use of combustible/explosive materials many acres might be lost, homes destroyed and lives lost.” *Id.*

Furthermore, Lt. Schultze 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 Scheel 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 Scheel exercise his authority to issue a local state of disaster and limit the use and sale of materials that could cause a wildfire due to the severe drought conditions.” See **Exhibit 5** attached to Executive Order 228 and incorporated herein by reference; and

Additionally, Chief Wherry states:

“In my 18 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 666 and is rising at an approximate rate of 7 points per day. I consider the drought conditions worse than during the last 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. On 2 occurrences, we have had extremely high KBDIs and drastically lower call volumes from years when no Disaster Declarations were in place.” *Id.*

Furthermore, Chief Wherry states:

“My department has limited resources considering the 250 square mile area we cover. I have 10 fulltime personnel per shift. Each shift works 24 hours on-call and 48 hours off. I have four engines, five 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. From January 1, 2009 until the present date, my department has responded to 234 fires, including 36 grassfires.” *Id.*

WHEREAS, Spring Branch Fire Department’s Fire Chief Eran Denzler 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 6** Affidavit of Fire Chief Eran Denzler attached to Executive Order 228 and incorporated herein by reference.

Additionally, Chief Denzler states:

“Drought conditions and increase of KBDI cause me concern with the upcoming 4th of July holiday. I have seen an increase in the acreage burnt with grassfires because grassfires are burning faster. This is attributed to the drought, low humidity, dry conditions and high temperatures.” *Id.*

Additionally, Chief Denzler 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 intermingles, which creates substantial life-safety concerns for fast-spreading grassfires. With areas becoming more urban interfaced, many more homes and lives 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 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. Since January 1, 2009, our department has had 61 grassfires.” *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 7 attached to Executive Order 228 and incorporated herein by reference.

Additionally, Marshal Patrick O’Connell states:

“I have been a resident of this county since January 26th, 2005, and since that time, the New Braunfels Fire Department has responded to 449 “natural vegetation” fires resulting in an estimated loss of over \$750,000.00. These fires include a 1000-acre fire that occurred on 12/24/2005, a 300-acre fire that occurred on 01/20/2006, a 900 acre fire that occurred on 08/16/2006, a 200-acre fire that occurred on 01/01/2008, a 350 acre fire that occurred on 01/31/2008, and a 210-acre fire that occurred on 01/11/2009. Each of these fires occurred during drought conditions very similar to those we are currently experiencing.” *Id.*

Furthermore, Marshal Patrick O’Connell states:

“When our department responds to grass fire call, it limits and jeopardizes that station’s ability to respond to EMS calls. Our department has two brush trucks and one tanker to cover approximately 157.2 square miles, including the entire City of New Braunfels, and our first due area outside of the incorporated city limits.” *Id.*

“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 Scheel 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, the Keetch-Byram Drought Index (KBDI) mean reading for Comal County, Texas is 672 and the fourteen (14) day outlook predicting the KBDI to register between 700 to 800 putting Comal County in **EXTREME conditions**, See Exhibits 8 & 9 attached to Executive Order 228 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. See Exhibit 10 attached to Executive Order 228 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. See Exhibit 11 attached to Executive Order 228 and incorporated herein by reference; and

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

WHEREAS, the County Judge Danny Scheel issued a Disaster Declaration and Executive Order No. 227 Prohibiting the Sale and Use of Restricted Fireworks due to "drought conditions" pursuant to Section 352.051 of the Local Government Code and Section 418.108 of the Government Code on June 30, 2009, and said Order and prohibition on the sale and use of restricted fireworks 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, 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:

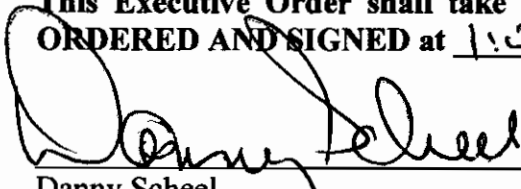
THE EXERCISE AND USE OF OUTDOOR WELDING AND/OR OTHER ACTIVITIES UTILIZING EXPLOSIVES OR COMBUSTIBLE MATERIALS IS PROHIBITED UNLESS PRIOR APPROVAL OF THE FIRE SAFETY PLAN FOR THE SAID WELDING OR OTHER ACTIVITIES IS OBTAINED FROM THE COMAL COUNTY FIRE MARSHAL PRIOR TO ENGAGING IN SUCH ACTIVITY. SAID FIRE

SAFETY PLAN MAY INCLUDE, BUT IS NOT LIMITED TO THE FOLLOWING FIRE SAFETY MEASURES: SATURATION OF THE SURROUNDING GROUND AREA WITH ADEQUATE MOISTURE, UTILIZATION OF ADEQUATE PERSONNEL TO OBSERVE AND HANDLE THE RESULTING EFFECTS FROM THE USE OF EXPLOSIVE OR COMBUSTIBLE MATERIAL, PREPARATION OF THE GROUND AREA TO PREVENT AND REMOVE LARGE AMOUNTS OF CURED GRASS, AND FIRE SUPPRESSION DEVICES. THE FIRE MARSHAL SHALL HAVE THE FINAL DETERMINATION AS TO THE NECESSARY FIRE SAFETY MEASURES FOR THE SAID WELDING OR OTHER ACTIVITIES.

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 1:00 a.m. (p.m.) THIS 1st DAY OF JULY, 2009.



Danny Scheel
Comal County Judge