



COUNTY JUDGE

Fort Bend County, Texas

Robert E. Hebert
County Judge

(281) 341-8608
Fax (281) 341-8609

June 22, 2011

The Honorable Rick Perry
Governor's Office
via email: Josh.Havens@governor.state.tx.us and
Constituent Communication Requests@governor.state.tx.us

RE: Extension of Emergency Declaration by Fort Bend County

Dear Governor:

Attached is Fort Bend County's Declaration of Local State of Disaster signed by the County Judge on June 22, 2011. Our intent is for Commissioners Court to take action on a request to extend the declaration at our next meeting on June 28, 2011. Fort Bend County's Declaration of Local State of Disaster includes a provision related to the restriction of fireworks authorized by Local Government Code §352.051. The restriction on the sale, possession and use of all fireworks is to begin at the start of the fireworks selling season and be effective for 60 hours.

I am requesting that the Governor authorize an extension of the broader fireworks restrictions effective through 7:00 a.m. July 5, 2011, as persistent dry and hot conditions continue to exist.

We appreciate prompt consideration of our request to protect the property of our residents in Fort Bend County.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Hebert", with a long, sweeping flourish extending from the end.

Robert E. Hebert
Fort Bend County Judge
robert.hebert@co.fort-bend.tx.us

cc: TDEM State Operations Center: soc@txdps.state.tx.us

THE STATE OF TEXAS §
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COUNTY OF FORT BEND §

**LOCAL DISASTER DECLARATION
AND ORDER PROHIBITING
SALE, DISPENSING, USE AND TRANSPORTATION OF FIREWORKS
FOR FORT BEND COUNTY, TEXAS**

WHEREAS, Fort Bend County has not had rainfall for an extended period of time, creating hot and dry conditions; and

WHEREAS, the hot and dry conditions pose the threat of large, dangerous and fast moving wildfires; and

WHEREAS, such fires have the potential of endangering lives and damaging property on a large scale; and

WHEREAS, on April 26, 2011, the Fort Bend County Commissioners Court executed the DECLARATION AND ORDER PROHIBITING OUTDOOR BURNING IN FORT BEND COUNTY, TEXAS and that prohibition is still in effect; and

WHEREAS on June 14, 2011, the Fort Bend County Commissioners Court executed the ORDER PROHIBITING SALE AND USE OF RESTRICTED FIREWORKS IN FORT BEND COUNTY, TEXAS pursuant to Texas Local Government Code Section 352.051 prohibiting the sale and the use of restricted fireworks and that prohibition is still in effect; and

WHEREAS, hot and dry conditions continue to worsen on a daily basis in Fort Bend County; and

WHEREAS, the Texas Government Code Chapter 418 gives the county judge the power to declare a local disaster within the county "if the threat of disaster is imminent"; and

WHEREAS, the magnitude of the potential damage and the rapidity with which such a fire could escalate to major proportions constitute an imminent threat of disaster; and

WHEREAS, declaration of such disaster authorizes the imposition of controls on activities which tend to increase the likelihood of fires; and

WHEREAS, such controls, once implemented, have the potential of protecting lives and property by mitigating the threat of dangerous fires; and

WHEREAS, a declaration issued under Section 418.108 of the Texas Government Code may include a restriction that exceeds a restriction authorized by Section 352.051, Local Government Code; and

WHEREAS, to the extent that a declaration includes a provision related to fireworks, any portion of the provision that exceeds the restrictions authorized by Local Government Code Section 352.051 is effective only for 60 hours, unless the county judge requests and the governor authorizes an extension of the broader fireworks restriction; and

WHEREAS, a local disaster declaration expires seven days after its issuance, unless the Commissioners Court consents to its renewal or continuance.

NOW THEREFORE IT IS HEREBY DECLARED by Robert Hebert, Fort Bend County Judge, that a local state of disaster exists for Fort Bend County, Texas based on the threat of large wildfires; and

BE IT ALSO DECLARED that this state of disaster will continue until rescinded in accordance with the above cited statute, but in no instance will this declaration continue for more than seven days without being authorized by the Fort Bend County Commissioners Court, or in the event the declaration pertains to fireworks, no more than 60 hours unless an extension of the restriction on fireworks has been received from the governor; and

BE IT ALSO DECLARED that the purpose of this Declaration and Order is the mitigation of the hazard posed by wildfires by curtailing the practice of outdoor burning, and the sale and use of all fireworks, which purpose is to be taken into account in any enforcement action based upon this order.

NOW THEREFORE IT IS ORDERED pursuant to the 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 beginning at 12:01 a.m. on June 24, 2011 and shall remain in effect until the state of disaster is terminated or extended:

**THE SALE, DISPENSING, TRANSPORTATION AND USE OF FIREWORKS
OF ALL FIREWORKS DESCRIBED IN SECTION 2154.001 (5), (6) AND (7) OF
THE TEXAS OCCUPATIONS CODE IS PROHIBITED.**

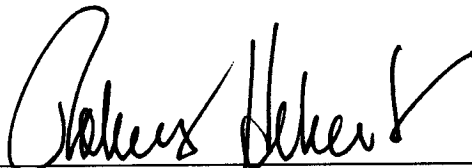
IT IS FURTHER ORDERED in accordance with Section 418.108(i) of the Texas Government Code and Section 352.051 of the Texas Local Government, a person who knowingly or intentionally violates this Declaration and Order commits a Class C Misdemeanor, punishable by a fine up to \$500; and

IT IS FURTHER ORDERED 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 Declaration and Order; and

IT IS FURTHER ORDERED that the fireworks prohibition does not apply to municipal or governmental sponsored fireworks displays and does not apply to a privately sponsored display that has been approved in advance by the County Fire Marshal.

This Declaration and Order shall be promptly publicized and filed with the County Clerk.


IN WITNESS WHEREOF, I affix my signature 2011 this 22 day of June, 2011
at 10:08 a.m./p.m.


Robert E. Hebert, County Judge

ATTEST/SEAL:


Dianne Wilson, County Clerk

I/MTR/Co Judge/fireworks/061011 File No. 2406

FILED FOR RECORD
NO _____ TIME 10:15 AM
P.M.
JUN 22 2011 SF

County Clerk Fort Bend Co, Texas

OCCUPATIONS CODE

TITLE 13. SPORTS, AMUSEMENTS, AND ENTERTAINMENT

SUBTITLE D. OTHER AMUSEMENTS AND ENTERTAINMENT

CHAPTER 2154. REGULATION OF FIREWORKS AND FIREWORKS DISPLAYS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2154.001. DEFINITIONS. In this chapter:

(5) "Fireworks" means a composition or device:

(A) designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation; and

(B) defined by 49 C.F.R. Section 173.56(j) (1996).

(6) "Fireworks 1.3G" means a large fireworks device:

(A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and

(B) classified as a 1.3G explosive by the department* in 49 C.F.R. Part 173 (1996).

(7) "Fireworks 1.4G" means a 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).

*Department of Transportation

THE STATE OF TEXAS §
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COUNTY OF FORT BEND §

**ORDER PROHIBITING
SALE AND USE OF RESTRICTED FIREWORKS
IN FORT BEND COUNTY, TEXAS**

WHEREAS, Section 352.051 of the Local Government Code provides that the commissioners court of a county by order may prohibit the sale or use of restricted fireworks in the unincorporated area of the county if the Texas Forest Service has determined that drought conditions exist on average in the county; and,

WHEREAS, the Texas Forest Service has determined that drought conditions exist on average in Fort Bend County;

NOW, THEREFORE, it is ORDERED that the sale and the use of "restricted fireworks", as defined in Section 352.051(a)(1) of the Local Government Code, are prohibited in all of the unincorporated areas of Fort Bend County. Pursuant to Section 352.051(a)(1) of the Local Government Code, "Restricted fireworks" means 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."

A person commits an offense if he knowingly or intentionally sells or uses restricted fireworks in the unincorporated area of Fort Bend County. In accordance with Section 352.051 of the Local Government Code, a person who knowingly or intentionally sells or uses restricted fireworks in violation of this order commits a Class C Misdemeanor, punishable by a fine up to \$500.


Be it also ORDERED that the purpose of this order is the mitigation of the public safety hazard posed by wild fires during the current drought conditions by curtailing the sale and use of restricted fireworks, which purpose is to be taken into account in any enforcement action based upon this order. It is FURTHER ORDERED that no location is designated as a safe area for the use of restricted fireworks.

This Order Prohibiting the Sale and Use of Restricted Fireworks shall expire upon the earlier of (1) an order by the Fort Bend County Commissioners Court lifting this Order Prohibiting the Sale and Use of Restricted Fireworks, or (2) a determination by the Texas Forest Service that drought conditions no longer exist on average in Fort Bend County.


ORDERED THIS 14th DAY OF June 2011.

FORT BEND COUNTY COMMISSIONERS COURT

APPROVED:


Robert E. Hebert, County Judge

ATTEST/SEAL:


Dianne Wilson, County Clerk



1/MTR/Co Judge/fireworks/06032011 File No. _____

STATE OF TEXAS

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COUNTY OF FORT BEND

**DECLARATION AND ORDER PROHIBITING
OUTDOOR BURNING IN FORT BEND COUNTY, TEXAS**

WHEREAS, specific climate and environmental conditions now exist in Fort Bend County due to an extreme deficit in precipitation levels; and,

WHEREAS, drought conditions exist, which means the existence of a long-term deficit of moisture creating atypically severe conditions with increased wildfire occurrence as defined by the Texas Forest Service;

WHEREAS, the Section 352.081 of the TEXAS LOCAL GOVERNMENT CODE provides that the Commissioners Court of a county by order may prohibit or restrict outdoor burning in general or of a particular substance in all or part of the unincorporated area of the county if drought conditions have been determined to exist by the Texas Forest Service; and,

WHEREAS, the Texas Forest Service has determined that that drought conditions exist in all of Fort Bend County.

NOW THEREFORE, BE IT DECLARED BY THE COMMISSIONERS COURT OF FORT BEND COUNTY:

Section I.

That pursuant to TEXAS LOCAL GOVERNMENT CODE, §352.081, a prohibition of outdoor burning is declared in and for the unincorporated areas of the County of Fort Bend, Texas.

Section II.

That this local prohibition of outdoor burning shall continue until rescinded or until a determination is made by the Texas Forest Service that drought conditions no longer exist, but in no instance shall it continue for a period of more than ninety (90) days, except with the consent of the Fort Bend County Commissioners Court.

Section III.

That this prohibition does not apply to outdoor burning activities related to public health and safety and/or trench-burning related to public health and safety that are authorized by the Texas Commission on Environmental Quality for: (1) firefighting training; (2) public utility; (3) natural gas pipeline or mining operations; (4) planting or harvesting of agriculture crops; or (5) burns that are conducted by a prescribed burn manager certified under Section 153.048 of the

TEXAS NATURAL RESOURCES CODE, and meet the standards of Section 153.047 of the TEXAS NATURAL RESOURCES CODE.

Section IV.

IT IS HEREBY ORDERED:

- A. That no person burn or order another to burn any material outside of an enclosure designed to contain and capable of containing all flames, sparks, embers, cinders, and ash produced by said burning. For the purposes of this Order "Person" means any individual, corporation, association or any other organized group of persons, or legal successors or representatives of the foregoing, or any other entity of any kind.
- B. That this Declaration and Order apply to all unincorporated areas of Fort Bend County.
- C. That this Declaration and Order be enforced by a person elected, employed, or appointed as a peace officer under Art. 2.12 TEXAS CODE OF CRIMINAL PROCEDURE.
- D. That violation of this Declaration and/or Order is a Class C misdemeanor punishable by a fine up to \$500.
- E. That this Declaration and Order remain in effect until rescinded, but shall not extend beyond ninety (90) days from the date this Order, unless so ordered by the Commissioners Court of Fort Bend County, Texas.
- F. That this Declaration and Order take effect and be in full force from and after its issuance.
- G. That this Declaration and Order be given prompt and general publicity and be filed promptly with the County Clerk.

IN WITNESS WHEREOF, I affix my signature this 26 day of April, 2011.

FORT BEND COUNTY COMMISSIONERS COURT

By: _____

Robert E. Hebert, County Judge

ATTEST

Dianne Wilson
Dianne Wilson, County Clerk

