



Farm and Ranch Freedom Alliance
P.O. Box 809
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Homemade Texas
1841 S. Lakeline Blvd.
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Cedar Park, TX 78613

July 23, 2025

Anthony Warren
Building & Community Services Director
Waxahachie Building and Community Services Department
401 S. Rogers
Waxahachie, Texas 75165

Dear Mr. Warren:

Our nonprofits work with cottage food producers across the state, and we were deeply involved in the passage of the bills in 2011 and since that established the Texas Cottage Food Law. We are writing today to ensure that you and the Waxahachie Building and Community Services Department are aware of the changes to the Texas Cottage Food Law that will become effective September 1, 2025.

You may recall receiving a letter from us in October of 2022, regarding Waxahachie's practice of requiring health department permits for cottage food operators who wanted to sell at local events. We advised that this practice was not allowed under the Texas Cottage Food Law, which has prohibited local governments from regulating the production of food by cottage food producers since its inception in 2011.

We did not receive a response to that letter. Indeed, cottage food producers continued to report the same issue to us, many of whom decided it was simply not financially feasible to conduct business in Waxahachie. Due to sovereign immunity, these limited resource businesses and our nonprofits had no effective recourse.

This issue has now been explicitly addressed by SB 541, which passed in the 89th regular legislative session. The new law states in part:

"SECTION 4. Section 437.0192, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows: (a) A local government authority, including a local health department, may not: (1) regulate the production of food at a cottage food production operation; or (2) require a cottage food production operation to obtain any type of license or permit or pay any fee to produce or sell directly to a consumer or

cottage food vendor, or to provide samples directly to a consumer, a food other than a food described by Sections 437.001(2-b)(A)(i)-(vi).

(c) A local government authority, including a local health department, may not employ or continue to employ a person who knowingly requires or attempts to require a cottage food production operation to obtain a license or permit in violation of Subsection (a)(2).

As of September 1, 2025, the city must discontinue the practice of requiring cottage food producers to obtain any kind of permit or pay any fee to produce, sell, or sample their food.

Any further reports of permits or fees being required of cottage food operators by the City of Waxahachie will trigger a complaint to the City Manager and City Council, with an accompanying demand that the employee responsible be terminated per the black and white letter of the law.

In light of the excellent track record for safety of cottage food producers in Texas (and indeed across the country), we are pleased that this issue is finally resolved, and we are looking forward to a small business boom this fall when cottage food operators will be able to sell their products at local events without improper regulatory requirements.

Sincerely,

Judith McGeary, Esq.
Executive Director
Farm and Ranch Freedom Alliance

Kelley Masters
President
Homemade Texas

Attachments: October 12, 2022 Letter
SB 541 (89th Regular Session Legislature)

Cc: State Representative Brian Harrison
State Senator Brian Birdwell
State Senator Lois Kolkhorst
Chief Ricky Boyd, Interim Waxahachie City Manager
Albert Lawrence, Deputy City Manager
Amber Villarreal, City Secretary
Billie Wallace, Waxahachie Mayor Place 4

Patrick Souter, Waxahachie Mayor Pro Tem Place 2
Tres Atkins, Waxahachie Council Member Place 1
Chris Wright, Waxahachie Council Member Place 3
Travis Smith, Waxahachie Council Member Place 5



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October 12, 2022

Anthony Warren
Senior Director of Building and Community Services
Waxahachie Building and Community Services Department
401 S. Rogers
Waxahachie, Texas 75165

Dear Mr. Warren:

Our nonprofits work with cottage food producers across the state, and we were deeply involved in the passage of the bills in 2011, 2013, and 2019 that established the Texas Cottage Food Law. We are writing today because we have become aware of actions by the Waxahachie Health Inspection Division of the Building and Community Services Department that violate state law and the rights of cottage food producers.

Isabel Shrouder is a home baker in the Dallas-Fort Worth metroplex who operates a cottage food business under the name of "Do Goodies". Each month, Ms. Shrouder chooses a person, organization, or family to donate a percentage of her proceeds to. In June of this year, Ms. Shrouder was hoping to participate in several local markets. As part of the application to participate in a Waxahachie-area market, she was required to submit her recipes.

MeLony Jordan, Waxahachie Health Inspector, reviewed her recipes and informed her, "THANK YOU FOR SENDING THE INFORMATION TO REVIEW. However the cottage food law clearly lists (Bakery goods which require any type of refrigeration such as cream, custard or meringue pies and cakes or pastries with cream cheese icings or fillings.) The pH value of 4.6 or less are required for (Acidified canned goods) not baked or TCS items. We will not be able to permit the menu items containing cream cheese nor any TCS items."

Ms. Shrouder also requested justification in writing as to why she would be required to purchase a permit if she were to participate in the market as a cottage food producer. "Also will you please tell me in writing the reasons that you explained to me via phone as to what the purpose of the fee is, you explained it was for the time it took for your office to look over the cottage information I provided such as labels, menus etc." Ms. Jordan responded, "As for the fees and why you are required to pay for a health permit, the city requires a health food permit fee. Please see the above attached application."

These actions directly conflict with the state laws and regulations. A cottage food operation is not required to submit recipes to local health departments or apply or pay for permits from the local health department. Moreover, it is illegal for a health department to issue a permit to an individual to prepare foods in their home. **This has been established law for over a decade, since the passage of the first Texas Cottage Food Law in 2011.**

I. Allowed cottage foods

Ms. Jordan incorrectly states that the cottage food law “clearly lists cream cheese icings” as being unallowed. Ms. Jordan appears to be quoting the state health department’s website, which is not law, and that language does **not** appear in Texas Health and Safety Code. Rather, the statute states: “A time and temperature control for safety food may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, **baked goods that require refrigeration, including cream or custard pies or cakes**, and ice products.”¹ “Cream cheese frostings” are not disallowed in the statute.

The question of whether or not a food qualifies as a non-time or temperature control for safety (TCS) food depends on the final food product, rather than an isolated test on the ingredients. As the statute clearly states, a TCS food “does **not** include a food that uses time and temperature control for safety food as ingredients **if the final food product** does not require time or temperature control for safety to limit pathogen growth or toxin production.”² In other words, a food may contain ingredients such as cream cheese and still be non-TCS, and thus allowed under the cottage food law.

It is well known that sugar and salt are ancient methods of inhibiting microbial growth by drawing available water from within the food. “The result is a reduction of the so-called product water activity (A_w), a measure of unbound, free water molecules in the food that is necessary for microbial survival and growth. The A_w necessary to inhibit growth of most bacteria is roughly 0.91.”³

The FDA Model Food Code contains a chart that sets out the pH and A_w necessary for a food to be considered non-TCS. Whether or not a food is TCS depends on its A_w value and pH combined. An A_w of less than 0.88 means the food is non-TCS irrespective of its pH, while an A_w of between 0.88 and 0.90 means the food is non-TCS so long as its pH is 5.0 or lower.⁴

Ms. Jordan’s response to Ms. Shrouder reflects a fundamental misunderstanding of the cottage food law, the Texas Food Establishment Rules, and how they are applied to TCS or non-TCS foods. Ms. Jordan appears to equate the issue of the pH threshold for pickled foods with the issue

¹ See Texas Health & Safety Code § 437.0196(a).

² See Texas Health & Safety Code § 437.0196(b).

³ <https://www.scientificamerican.com/article/how-do-salt-and-sugar-pre/>

⁴ See FDA 2017 Model Food Code, Annex 3, Table B. Available at <https://www.fda.gov/media/110822/download> at p.345.

of whether a food is or is not TCS. That is incorrect both scientifically and legally, and is inconsistent with both the state regulations and the FDA Model Food Code.

Ms. Shrouder provided your department with documentation that one of her products had an A_w of 0.83, and the other had an A_w of 0.90 and a pH of 4.69. Thus, under the FDA's Model Food Code, which has been adopted by the Texas Department of State Health Services, both items are non-TCS and allowed under the Texas Cottage Food Law. The fact that they contain an ingredient such as cream cheese is not a relevant or legal basis for denying her the right to sell them as cottage food items. She has a legal right to prepare these foods and sell them directly to consumers, in accordance with the Cottage Food Law, without any further involvement of the state or local health departments.

II. Approval of recipes

The Texas Cottage Food Law lists the types of foods that can be made and sold in an individual's home kitchen.⁵ **Absent from the statute is any provision for DSHS or local health departments to require the submission and approval of recipes.** There is one very limited exception: DSHS is directed to post approved sources for recipes for pickled, acidified canned, or fermented foods. The absence of any requirement to submit recipes in general, combined with the specific requirement to use recipes from approved sources for pickled foods, makes it abundantly clear that, for most foods, neither DSHS nor the local health departments have any involvement in reviewing a cottage food operator's recipes. Indeed, the statute specifically provides that as long as the cottage food operator is acting within the scope of the law, neither DSHS nor the local health department can require inspections or otherwise regulate their activities (absent an immediate and serious threat to human life or health).⁶

As such, Waxahachie's practice of pre-emptively reviewing the recipes of hopeful cottage food market participants is contrary to the state statute.

III. Requiring a health or food establishment permit of a cottage food operator (CFO)

The 2017 FDA Model Food Code, incorporated by reference into the 2021 Texas Food Establishment Rules, states: "**Private Homes and Living or Sleeping Quarters, Use Prohibition.** A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting FOOD ESTABLISHMENT operations." FDA 2017 Food Code 6-202.111.

Texas Health & Safety Code § 437.0191 states: "EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) A cottage food production operation is not a food service establishment for purposes of this chapter." Thus, **by definition**, a CFO **cannot** be issued a food establishment permit, temporary or not.

The statute continues: Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL GOVERNMENT AUTHORITIES PROHIBITED; COMPLAINTS.

⁵ See Texas Health & Safety Code § 437.001(2-b).

⁶ Texas Health & Safety Code §§ 437.0191 & 437.0192.

(a) A local government authority, including a local health department, may not regulate the production of food at a cottage food production operation.

The meaning and intent of the law is clear: cottage food operators are not food establishments, and must be allowed to operate free of fees, permits, or other regulations. Requiring a permit of a cottage food operator to participate in an event is a form of regulation.

Yet the Waxahachie Health Department is claiming authority to review the producer's recipes and deny approval of foods even when they are non-TCS, which is regulating the production of the food. The department is also requiring the cottage food producer to apply for the same "temporary food permit" as a regular food manufacturer, and charging the cottage food operators an even higher fee than food manufacturers (see attached Waxahachie Temporary Food Permit Application). Both of these actions violate the state law.

Your department should immediately refund permit fees to any cottage food operators who have been illegally required to purchase permits to sell at events in Waxahachie's jurisdiction.

Additionally, your department should immediately discontinue the practice of requiring cottage food producers to submit recipes for review, as the Texas Legislature has not granted this authority to local health departments or DSHS.

We are very concerned that Waxahachie residents are being deprived of their legal rights under state law. Given this breach of state law and the confusion it has caused for cottage food operations in and around Waxahachie, the City needs to post written clarification that cottage food operations are not required to submit their recipes nor apply for health permits.

Sincerely,

Judith McGeary, Esq.
Executive Director
Farm and Ranch Freedom Alliance

Kelley Masters
President
Homemade Texas

Attachments: Emails between Isabel Shrouder and McLony Jordan
Waxahachie Temporary Food Permit Application and Submittal Checklist

Cc: State Representative Brian Harrison
State Senator Brian Birdwell
State Senator Lois Kolkhorst

Michael Scott, Waxahachie City Manager

Albert Lawrence, Deputy City Manager

David Hill, Waxahachie Council Member Place 1

Patrick Souter, Waxahachie Council Member Place 2

Chris Wright, Waxahachie Council Member Place 3

Billie Wallace, Waxahachie Council Member Place 4

Travis Smith, Waxahachie Council Member Place 5

AN ACT

relating to cottage food production operations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 437.001, Health and Safety Code, is amended by amending Subdivision (2-b) and adding Subdivisions (3) and (5-a) to read as follows:

(2-b) "Cottage food production operation" means an individual, operating out of the individual's home, or a nonprofit organization that ~~[who]~~:

(A) produces at the individual's home or the home of an individual who is a director or officer of the nonprofit organization, as applicable, any food other than ~~[subject to Section 437.0196]~~:

(i) meat, meat products, poultry, or poultry products;

(ii) seafood, including seafood products, fish, fish products, shellfish, and shellfish products;

(iii) ice or ice products, including shaved ice, ice cream, frozen custard, popsicles, and gelato;

(iv) low-acid canned goods;

(v) products containing cannabidiol or tetrahydrocannabinol; or

(vi) raw milk and raw milk products ~~[a baked good that is not a time and temperature control for safety food, as~~

1 ~~defined by Section [437.0196](#),~~
2 ~~[(ii) candy,~~
3 ~~[(iii) coated and uncoated nuts,~~
4 ~~[(iv) unroasted nut butters,~~
5 ~~[(v) fruit butters,~~
6 ~~[(vi) a canned jam or jelly,~~
7 ~~[(vii) a fruit pie,~~
8 ~~[(viii) dehydrated fruit or vegetables,~~
9 ~~including dried beans,~~
10 ~~[(ix) popcorn and popcorn snacks,~~
11 ~~[(x) cereal, including granola,~~
12 ~~[(xi) dry mix,~~
13 ~~[(xii) vinegar,~~
14 ~~[(xiii) pickled fruit or vegetables,~~
15 ~~including beets and carrots, that are preserved in vinegar, brine,~~
16 ~~or a similar solution at an equilibrium pH value of 4.6 or less,~~
17 ~~[(xiv) mustard,~~
18 ~~[(xv) roasted coffee or dry tea,~~
19 ~~[(xvi) a dried herb or dried herb mix,~~
20 ~~[(xvii) plant-based acidified canned~~
21 ~~goods,~~
22 ~~[(xviii) fermented vegetable products,~~
23 ~~including products that are refrigerated to preserve quality,~~
24 ~~[(xix) frozen raw and uncut fruit or~~
25 ~~vegetables, or~~
26 ~~[(xx) any other food that is not a time and~~
27 ~~temperature control for safety food, as defined by Section~~

~~437.0196~~];

(B) has an annual gross income of \$150,000 [~~\$50,000~~] or less from the sale of food described by Paragraph (A), as the department annually adjusts for inflation using the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics or its successor in function;

(C) sells the foods produced under Paragraph (A) [~~only~~] directly to consumers or to a cottage food vendor; and

(D) delivers products to the consumer or cottage food vendor at the point of sale or another location designated by the consumer or cottage food vendor.

(3) "Cottage food vendor" means a person located in this state who:

(A) has a contractual relationship with a cottage food production operation; and

(B) sells directly to consumers located in this state on behalf of the cottage food production operation a food other than a time and temperature control for safety food.

(5-a) "Nonprofit organization" means an organization exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code.

SECTION 2. Section ~~437.0196~~(a), Health and Safety Code, is redesignated as Section ~~437.001~~(8), Health and Safety Code, and amended to read as follows:

(8) "Time [~~(a) In this section, "time~~] and temperature control for safety food" means a food that requires

time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. The term:

(A) [~~A time and temperature control for safety food~~] may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, baked goods that require refrigeration, including cream or custard pies or cakes, and ice products; and

(B) [~~. The term~~] does not include a food that uses time and temperature control for safety food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

SECTION 3. Section [437.0191](#), Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding any other law, a cottage food production operation that manufactures and distributes at wholesale cottage food for resale by others is exempt from department licensing requirements under Chapter [431](#).

SECTION 4. Section [437.0192](#), Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A local government authority, including a local health department, may not:

(1) regulate the production of food at a cottage food production operation; or

1 (2) require a cottage food production operation to
2 obtain any type of license or permit or pay any fee to produce or
3 sell directly to a consumer or cottage food vendor, or to provide
4 samples directly to a consumer, a food other than a food described
5 by Sections 437.001(2-b)(A)(i)-(vi).

6 (c) A local government authority, including a local health
7 department, may not employ or continue to employ a person who
8 knowingly requires or attempts to require a cottage food production
9 operation to obtain a license or permit in violation of Subsection
10 (a)(2).

11 SECTION 5. Section 437.0193, Health and Safety Code, is
12 amended by amending Subsections (a) and (b) and adding Subsections
13 (b-1) and (e) to read as follows:

14 (a) Food [~~described by Section 437.001(2-b)(A)~~] sold by a
15 cottage food production operation must be packaged in a manner that
16 prevents product contamination, except that a food item is not
17 required to be packaged if it is too large or bulky for conventional
18 packaging.

19 (b) The executive commissioner shall adopt rules requiring
20 a cottage food production operation to label all of the foods
21 [~~described in Section 437.001(2-b)(A) that~~] the operation sells to
22 consumers. The label must include:

23 (1) the name and address of the cottage food
24 production operation; and

25 (2) the following disclosure:

26 "THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE THAT IS NOT
27 SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION." [~~a statement that~~

1 ~~the food is not inspected by the department or a local health~~
2 ~~department.]~~

3 (b-1) Notwithstanding Subsection (b)(1), a cottage food
4 production operation is not required to include on a food label the
5 address of the operation if the operation registers with the
6 department in the form and manner the department prescribes, and
7 includes on the label a unique identification number provided by
8 the department. The executive commissioner may adopt rules to
9 implement this subsection.

10 (e) A cottage food production operation that sells a time
11 and temperature control for safety food must include:

12 (1) on the food label the date the food was made; and

13 (2) on the food label or on an invoice or receipt
14 provided with the food when sold the following statement in at least
15 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent illness from
16 bacteria, keep this food refrigerated or frozen until the food is
17 prepared for consumption."

18 SECTION 6. Section 437.0194, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION
21 OPERATIONS PROHIBITED OR RESTRICTED. (a) Except as provided by
22 Subsection (a-1), a [A] cottage food production operation may not
23 sell food [any of the foods described in Section 437.001(2-b)(A)]
24 at wholesale.

25 (a-1) A cottage food production operation may sell to a
26 cottage food vendor at wholesale food other than a food described by
27 Sections 437.002(2-b)(A)(i)-(vi) or a time and temperature control

1 for safety food.

2 (b) A cottage food production operation may sell a food
3 other than a food described by Sections 437.002(2-b)(A)(i)-(vi)
4 [~~Section 437.001(2-b)(A)~~] in this state through the Internet [~~or by~~
5 ~~mail order~~] only if:

6 (1) the consumer purchases the food through the
7 Internet [~~or by mail order~~] from the operation and the operator or
8 operator's employee or household member personally delivers the
9 food to the consumer; and

10 (2) subject to Subsection (c), before the operator
11 accepts payment for the food, the operator provides all labeling
12 information required by Section 437.0193(e) [~~437.0193(d)~~] and
13 department rules to the consumer by[+]

14 [~~(A)~~] posting a legible statement on the
15 operation's Internet website[+]

16 [~~(B) publishing the information in a catalog; or~~

17 [~~(C) otherwise communicating the information to~~
18 ~~the consumer~~].

19 (c) The operator of a cottage food production operation that
20 sells a food [~~described by Section 437.001(2-b)(A)~~] in this state
21 in the manner described by Subsection (b):

22 (1) is not required to include the address of the
23 operation in the labeling information required under Subsection
24 (b)(2) before the operator accepts payment for the food; and

25 (2) shall provide the address or unique identification
26 number of the operation on the label of the food in the manner
27 required by Section 437.0193(b) or (b-1) after the operator accepts

1 payment for the food.

2 SECTION 7. Chapter [437](#), Health and Safety Code, is amended
3 by adding Sections 437.01953, 437.01955, and 437.01965 to read as
4 follows:

5 Sec. 437.01953. REQUIREMENTS FOR SALE OF CERTAIN FOOD. (a)
6 A cottage food production operation that sells to consumers a time
7 and temperature control for safety food shall:

8 (1) register with the department in the form and
9 manner prescribed by the department;

10 (2) store and deliver the food at the air temperature
11 necessary to prevent the growth of bacteria that may cause human
12 illness; and

13 (3) label the food in accordance with Section
14 [437.0193](#).

15 (b) The executive commissioner may adopt rules to implement
16 this section.

17 Sec. 437.01955. SAMPLING AND DONATION OF COTTAGE FOOD. (a)
18 A cottage food production operation may provide samples of its
19 products to consumers at any location in this state in accordance
20 with the standards provided by Section [437.020\(c\)](#).

21 (b) A cottage food production operation may donate food
22 other than time and temperature control for safety food for sale or
23 service at an event, including a religious or charitable
24 organization's bake sale, to the same extent an individual is
25 allowed by law to donate food.

26 Sec. 437.01965. COTTAGE FOOD VENDOR. (a) A cottage food
27 vendor may sell food produced by a cottage food production

1 operation in accordance with Section 437.0194(a-1) directly to
2 consumers at a farmers' market, a farm stand, a food service
3 establishment, or any retail store.

4 (b) A cottage food vendor who sells food described by
5 Subsection (a) must display in a prominent place near the location
6 where the food is offered for sale a sign with the following
7 disclosure:

8 "THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE THAT IS NOT
9 SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION."

10 (c) Food produced by a cottage food production operation and
11 sold by a cottage food vendor must include on the label the date the
12 food was made.

13 (d) A cottage food vendor that purchases food from a cottage
14 food production operation at wholesale shall register with the
15 department in the form and manner the department prescribes. The
16 executive commissioner may adopt rules to implement this
17 subsection.

18 SECTION 8. The following provisions of the Health and
19 Safety Code are repealed:

- 20 (1) Section 437.0193(d);
21 (2) Section 437.01952;
22 (3) the heading to Section 437.0196; and
23 (4) Section 437.0196(b).

24 SECTION 9. This Act takes effect September 1, 2025.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 541 passed the Senate on April 10, 2025, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 20, 2025, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 541 passed the House, with amendments, on May 13, 2025, by the following vote: Yeas 135, Nays 5, three present not voting.

Chief Clerk of the House

Approved:

Date

Governor