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Box 121
Liberty Hill, TX 78642



P.O. Box 809
Cameron, TX 76520

July 27, 2026

Jason Watson
Director of Building & Community Services
Waxahachie Building and Community Services Department
401 S. Rogers
Waxahachie, Texas 75165

Dear Mr. Watson:

Homemade Texas and the Farm and Ranch Freedom Alliance have recently become aware that the City of Waxahachie is requiring cottage food producers and cottage food vendors to execute a sworn and notarized "Affidavit of Cottage Food Producer/Vendor Status" as a condition of participating in certain events.

Documents produced by the City pursuant to the Texas Public Information Act provide important context regarding the development and intended purpose of the affidavit. In an August 28, 2025, email, the City explained that the purpose of the affidavit was to "establish a list" of cottage food producers and vendors and to identify those who were exempt from local permits and fees. We understand that administrative objective, but it could be achieved by a simple unsworn form.

Subsequent communications demonstrate that the affidavit is far more than a recordkeeping tool. On September 10, 2025, city staff were instructed by you that "[r]efusal or failure to complete and provide this affidavit would render these targeted goods, and selling of said goods, to be non-compliant with both City and State statutes."

This raises an obvious question: what City and State statutes? Chapter 437 of the Texas Health and Safety Code contains no requirement that a cottage food producer or cottage food vendor execute a City-created affidavit, nor does it provide that failure to do so renders the sale of cottage foods unlawful. To the contrary, in 2025, the Legislature explicitly removed local barriers to the production, sale, and sampling of cottage foods. Section 437.0192 requires that a local government authority may not regulate the production of food at a cottage food production operation; or require a cottage food production operation to obtain **any type** (emphasis added) of license or permit or **pay any fee** (emphasis added) to produce or sell food. Further, 437.0192(c) states that "[a] local government authority [...] 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)." A municipal ordinance cannot authorize what state law prohibits, nor can it create a mandatory precondition to participation that the Legislature deliberately chose not to require.

On October 21, 2025, vendors were informed by the City the form was "the new required affidavit that replaces the permit for the cottage law vendors going forward." An affidavit is not merely paperwork; it is a sworn statement carrying legal significance. Sworn affidavits are ordinarily used when a governmental entity is exercising a judicial, quasi-judicial, licensing, permitting, investigative, or enforcement function, or where a statute specifically requires a sworn statement. None of those circumstances exist here. Cottage food operators are not required to apply for a permit, license, registration, approval, or exemption from the City. They are simply engaging in an activity that is already authorized by state law. Imposing the cost and burden on CFOs, many of whom live in small rural towns, of finding a notary and paying for their services is an unreasonable requirement.

The City's own records demonstrate that the affidavit functions as a replacement for the permit system the Legislature chose to eliminate. The form is not merely informational. It is mandated by the City as a condition of participation and sworn to by the individual. Those are all the hallmarks of a permitting or licensing scheme.

The City has authority to enforce the Texas Cottage Food Law. If an operator sells prohibited foods, fails to register with DSHS where required, uses improper labeling, or otherwise operates outside the scope of the statute, the City may take appropriate enforcement action. A sworn affidavit neither prevents those violations nor grants the City enforcement authority it does not already possess.

Homemade Texas and FARFA respectfully request that the City immediately discontinue the practice of requiring a sworn and notarized Affidavit of Cottage Food Producer/Vendor Status and provide written confirmation of same within 10 days of receipt of this letter. If the City's objective is simply to identify vendors participating in City events, that objective can be achieved through a simple unsworn form.

We welcome the opportunity to meet with the City to discuss alternatives that satisfy the City's administrative needs while remaining consistent with the state law.

Regards,

Kelley Masters
President and Founder
Homemade Texas
(737) 312-8444

Judith McGeary
Executive Director
Farm and Ranch Freedom Alliance
(512) 484-8821

Attachment A: August 28, 2025 email from Kevin Garten

Attachment B: September 10, 2025 email from Jason Watson with Affidavit

Attachment C: October 21, 2025 email from Gumaro Martinez

Cc: State Representative Brian Harrison
State Senator Brian Birdwell
State Senator Bob Hall
State Senator Lois Kolkhorst
Ricky Boyd, Waxahachie City Manager
Albert Lawrence, Deputy City Manager
Amber Villarreal, City Secretary
Billie Wallace, Waxahachie Mayor
Travis Smith, Mayor Pro Tem, Waxahachie Council Member Place 5
Tres Atkins, Waxahachie Council Member Place 1
Patrick Souter, Waxahachie Mayor Pro Tem Place 2
Chris Wright, Waxahachie Council Member Place 3

ATTACHMENT A

From: Garten, Kevin <kevin.garten@waxahachie.com>
Subject: SB 541 waiver form
To: Brooks, Shon <sbrooks@waxahachie.com>
Cc: Muniz, Vanessa <vanessa.muniz@waxahachie.com>; Jordan, Me'Lony <mjordan@waxahachie.com>
Sent: August 28, 2025 6:09 PM (UTC+00:00)
Attached: Cottage Food Waiver 082825.docx

Shon,

Attached is the Cottage Food waiver for legal review by the City attorney.

The intent of this waiver form is to establish a list of Cottage Food Producers and Cottage Food Vendors that will be participating in the farmers market, civic center events and similar events. This list will be used by City staff to verify the exempt status of the individual filling out the waiver form and make sure that no Health Department permits or Health Department fees are required for these individuals. The list will also be used to assist Health inspectors that may be at these events performing their duties to identify exempt individuals that will not require inspection or regulation that is covered under the new State law (<https://capitol.texas.gov/tlodocs/89R/billtext/html/SB00541F.htm>)

Please confirm this form is acceptable for this purpose.

Thanks,

Kevin Garten, CBO
Assistant Director – Building and Community Services
408 S. Rogers | Waxahachie, Texas 75165
O: (469) 309-4037 |
Kevin.Garten@waxahachie.com



ATTACHMENT B

From: Watson, Jason <jason.watson@waxahachie.com>
Subject: Cottage Food Affidavit
To: Jordan, Me'Lony <mjordan@waxahachie.com>; Garten, Kevin <kevin.garten@waxahachie.com>
Cc: Brooks, Shon <sbrooks@waxahachie.com>
Sent: September 10, 2025 6:28 PM (UTC+00:00)
Attached: Cottage Food Affidavit.pdf

Good Afternoon,

Please see attached the City's official cottage food affidavit.

It may also be found here: K:\Applications & Handouts\Applications\PDF Version\Cottage Food Affidavit

Please see advised; Refusal or failure to complete and provide this affidavit would render these targeted goods, and selling of said goods, to be non-compliant with both City and State statutes.



Jason B. Watson, MCP, CBO, CFM
Senior Director Building & Community Services
469-309-4038 | jason.watson@waxahachie.com



ATTACHMENT B

City of Waxahachie
Building & Community Services
Affidavit of Cottage Food Producer/Vendor Status

I, _____ hereby declare and affirm the following:
[Print Full Name]

I am a Cottage Food Producer or Cottage Food Vendor that is not subject to regulation by City of Waxahachie Health Permits or Inspections per section 437.0192 of the Texas Health and Safety Code.

I am a: ☐ Cottage Food Producer ☐ Cottage Food Vendor

I am selling time and temperature control for safety (TCS) food: ☐ Yes ☐ No (check one - Cottage Food Producer Only)

I acknowledge the following items:

I will be selling foods other than the following items prohibited by State Cottage Food law: (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

For Cottage Food Producers:

The products sold shall include a label with the date the food was made on time and temperature control for safety (TCS) food and have all labeling required of the Cottage Food Producer intact and in the manner required by the State

_____ Include the name and address of the cottage food production operation (address may be replaced with the unique identifier number from the State as allowed per law)
[initial]

_____ Include the following disclosure: "THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE THAT IS NOT SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION."
[initial]

_____ On time and temperature control for safety food; a label, invoice or receipt that states in at least 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food refrigerated or frozen until food is prepared for consumption."
[initial]

For Cottage Food Vendors:

The products sold shall include a label with the date the food was made have all labeling required of the Cottage Food Producer intact and in the manner required by the State

_____ Include the name and address of the cottage food production operation (address may be replaced with the unique identifier number from the State as allowed per law)
[initial]

_____ Display a sign in a prominent place near the location where the food is offered for sale with the following disclosure: "THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE THAT IS NOT SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION."
[initial]

Producer or Vendor Signature _____ Date _____

DSHS Cottage Food Producer or Vendor Identifier (if required) _____

Address of Cottage Food Producer or State issued unique identification number in lieu of label address (per Section 437.0193 (b-1)):

I have provided the required proof of Cottage Food Producer registration with the Texas Department of State Health Services as required by section 437.01953 (a) (1) (d) of the State of Texas Health and Safety Code if selling TCS food or Cottage Food Vendor registration with the Texas Department of State Health Services as required by section 437.01965 (d) of the Texas Health and Safety Code with this Affidavit document.

[Notary Seal]

For the purposes of this document the term Cottage Food Producer has the same meaning as the Cottage Food Production Operation as defined below.

Statutory Provisions:

From § 437.001 Texas Health and Safety Code

“Cottage Food Production Operation” means an individual, operating out of the individual’s home, or a non-profit organization that:

- (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:
 - (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
 - (vi) raw milk and raw milk products
- (B) has an annual gross income of \$150,000 or less from the sale of food described in paragraph A, as the department annually adjusts for inflation using the Consumers 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 directly to consumers or to a Cottage Food Vendor
- (D) delivers products to the consumer or the Cottage Food Vendor at the point of sale or another location designated by the consumer or Cottage Food Vendor

“Cottage Food Vendor” means person located in the State of Texas who:

- (A) Has a contractual relationship with Cottage Food Production Operation
- (B) Sells directly to consumers located in the State of Texas on behalf of the Cottage Food Production Operation other than time and temperature control for safety food

“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.

“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 a refrigeration, to prevent the growth of bacteria that may cause human illness.

From: Martinez, Gumaro <gmartinez@waxahachie.com>

Sent: Tuesday, October 21, 2025 8:42 AM

To: Martinez, Gumaro <gmartinez@waxahachie.com>

Cc: Mendez, Wally <wmendez@waxahachie.com>; Jordan, Me'Lony <mjordan@waxahachie.com>; Jauregui, Alicia <Alicia.Jauregui@waxahachie.com>

Subject: Upcoming Fall Winter Market 2025/26

ATTACHMENT C

Good Morning Farmers Market!

I hope everyone is doing well and gearing up for the upcoming Fall-Winter Market. The market will be closed this weekend due to the Crossroad of Texas GO TEXAN Country Festival. Come out and have a good time, weather permitting!

The market will run from November 1, 2025 – April 25, 2026, with an off month for January 2026. Many of you are just staying over from the Spring-Summer season, but if you are new to the market and need to move-in, please contact Wally Mendez on his work cell is (972) 268-5685 between 10/28 – 10/31. That's obviously if you need to bring in items for your booth that you couldn't do the morning of November 1st.

For any of my food vendors and cottage law vendors, if you have not coordinated with our health department to get the appropriate permit or signed the Cottage Food Affidavit, please do as soon as possible to prevent any delays from participating in the upcoming season. I have attached the new required affidavit that replaces the permit for the cottage law vendors going forward. I will need a fully executed copy and so will our health department. Below is the Health Departments contact and email:

Health Dept Contact:

phone: 469-309-4134

email: bcservices@waxahachie.com

Lastly, I wanted to share that Eleana will not be returning with the City. She has decided to stay home with her babies, and we are grateful for all her hard work and dedication. She brought a great energy to the everything she did, especially the Farmers Market. We are actively looking to backfill her position and until then, I will do my best to be your point of contact for all things Farmers Market. You also have access to your **Farmers Market President – Tommy Jones (Jams, Jellies, & More)** and **Vice President – John Paul Dineen (The Yellow Farmhouse)**.