



Farm and Ranch Freedom Alliance
P.O. Box 809
Cameron, TX 76520



Homemade Texas
1841 S. Lakeline Blvd.
Ste. 101 Box 192
Cedar Park, TX 78613

October 11, 2021

Houston Health Department
Food Safety and Inspection Program
8000 North Stadium Dr., 2nd Floor
Houston, TX 77054

Dear Houston Health Department:

It has come to our attention that you are requiring cottage food operators (CFOs) to purchase a “Temporary Food Dealer’s Permit” to sell cottage foods at certain events.

The Texas Health and Safety Code clearly states that “[a] local government authority, including a local health department, may **not** regulate the production of food at a cottage food production operation.” Tex. Health & Safety Code § 437.0192 (emphasis added). A permit is a method of regulating.

Requiring a food dealers’ permit effectively treats the cottage food operator as if they were a food establishment, contrary to the state law that expressly **exempts** CFOs from being treated as food service establishments. Tex. Health & Safety Code § 437.0191.

The Healthy and Safety Code recognizes local government entities’ ability to regulate “food service establishments, retail food stores, mobile food units, and roadside food vendors.” Tex. Health & Safety Code § 437.002, 437.003, 437.004. Cottage food operations, by state law, do not fall within any of those categories.

Your department has no legal basis to require any kind of food-related permit from a CFO at any location.

When asked to supply the legal justification for this permit requirement, you cited Q31 from the “Frequently Asked Questions” page on TexasCottageFoodLaw.com.

Q31. Can a city tell me I need a city permit to sell in a certain location?

Yes. Although the law precludes local government authorities, including health departments, from regulating the production of food at a cottage food production operation, if a local government has a general ordinance — such as you have to get a permit to sell any product at some location, that is still valid and applicable. A city

cannot make a special ordinance or regulation that only applies to cottage food operations.

This response is inappropriate for two reasons:

1. TexasCottageFoodLaw.com is a third-party website written for lay people (cottage food operators) to help them understand the rules of the cottage food law. **It is not a legal source and does not claim to be one.**
2. Given the language and the history of the cottage food law, under which local health departments have been clearly barred from regulating cottage food operators, the website's comment is clearly intended to address general requirements, such as bans on people setting up to sell items of any kind by a roadside in certain areas or a limit on the sort of signage that can be used. (Note that we can speak with certainty on the intention, since Ms. Masters is also the author of that site.)

By citing a non-legal source to justify your permit requirements, you have effectively conceded that you have no legal basis for your requirement. The Health Department needs to stop this violation of state law immediately.

Sincerely,

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

Kelley Masters
Board President
Homemade Texas

Cc: Senator Lois Kolkhorst
Representative Eddie Rodriguez