

## Frozen Dessert (Soft Serve) Program

### Regulation

Any person in a retail food establishment operating a frozen dessert machine is required by Section 20-39 of the Houston Food Ordinance to possess a “frozen desserts retail establishment permit.” [link to Frozen Dessert Permit](#) A frozen dessert machine is any machine that freezes, or partially freezes and dispenses frozen desserts for retail sale and distribution. Examples of frozen dessert mixes normally used in machines include dairy based products, such as ice cream, sherbet, and frozen yogurt. Non-dairy frozen dessert mixes which may also be frozen in machines include sorbet, water ices, Italian ice, slush and some frozen coffee beverages.

Retail food establishments are *not* considered frozen dessert retail establishments include those that:

1. Buy bulk solid pack ice cream or yogurt and scoop it from the container, but do not make frozen ice cream or yogurt in a frozen dessert machine.
2. Purchase ice cream or other frozen products in pre-packaged retail containers for re-sale to the public.
3. Provide vending machines that dispense only packaged ice cream, popsicles, and other novelties.
4. Make snow cones or other ice cup novelties from shaved or crushed ice.
5. Freeze or blend alcoholic beverages.

### Frozen dessert sample collection

A sanitarian will collect frozen dessert samples from frozen dessert retail establishments and submit the samples for analysis at the Houston Department of Health and Human Services laboratory at a frequency determined by the department. The samples are checked for coliforms and bacterial count.

The maximum limits for bacteriological standards for frozen desserts and mix set forth in Rule §217.65 of the Texas Administrative Code, are 40 coliform per milliliter (ml) and 50,000 bacteria per ml (standard plate count.)

Establishments with samples exceeding these limits will receive the laboratory results by post card. The bacterial plate count and the coliform count will be indicated on the post card. This notice will also alert management to review cleaning and sanitizing procedures for the machine and to make sure that staff use good hygienic practices when handling the product and cleaning the machine

Results exceeding legal standards will initiate further sampling and enforcement procedures, including the quarantine of the machine and issuance of citations.

# FAQ's

1. Who is required to purchase a frozen desserts retail establishment permit?

If you are an applicant for a food dealer's permit, you must disclose to the health officer during the pre-operational inspection if you plan to use a frozen dessert machine in your food establishment or mobile unit to freeze or partially freeze and dispense frozen desserts for retail sale or distribution. You must make application for a frozen desserts retail establishment permit at the time of inspection.

2. What if I already have a food dealer's permit and want to install a frozen dessert machine in the near future, how do I apply for a frozen desserts retail establishment permit?

You may apply by phone. Call 713-794-9200 to request a frozen desserts retail establishment permit.

3. When is a frozen dessert retail establishment permit not required?

If an establishment already has a valid food dealer's permit, no frozen desserts retail establishment permit is needed if the establishment's menu/grocery items include the following:

- A. bulk hard pack ice cream, yogurt or frozen ices that are required to be scooped out of a container.
- B. ice cream or other frozen desserts that are sold in packages.
- C. ice cream or other frozen desserts that sold in packages from vending machines.
- D. snow cones or other ice cup novelties that are made from shaved or crushed ice.
- E. alcoholic beverages that are frozen or blended in machines.

4. What is the cost of a retail frozen dessert establishment permit?

The cost of a retail frozen dessert's permit is \$110 per year. In the event that the term of an applicant's frozen desserts retail establishment permit has a shorter duration than the term of the food dealer's permit, the fee for the frozen desserts retail establishment permit shall be prorated for the unexpired term of the food dealer's permit at the rate of \$9.00 per month for each full month or portion of a month remaining thereon, provided that the minimum prorate fee shall be \$54.00.

5. If I lose my retail frozen dessert establishment permit, what is the replacement cost?

The replacement fee is \$25.00.

6. What is the cost of a nonprofit retail frozen dessert establishment permit?

The cost of the permit for a nonprofit organization is \$45.00 per year.

7. A representative from your department picks up samples from my frozen dessert machine and takes them to the laboratory. What is the laboratory testing the samples for?

The laboratory is checking for coliform and doing a standard plate count for bacteria. The maximum limits for coliform in a sample are 40 coliforms per milliliter. The maximum limits for bacteria are 50,000 bacteria per milliliter.

8. Will I be informed of the results of the laboratory tests for my frozen dessert samples?

You will be informed results by post card only if the results exceed the maximum limits.

9. What should I do if the results exceed the maximum limits for bacteria or coliform?

Expect that the department sanitarian will soon draw another sample from your machine. Before that happens, review the cleaning and sanitizing procedures for your frozen dessert machine. Check the temperature of the mix and the frozen dessert product to insure that internal temperatures are maintained at temperatures below 41°F. Check personnel to make sure that they are washing hands/changing gloves as often as necessary and using other good hygienic practices. If you have questions, call 713-794-9200.

10. Do frozen dessert samples showing excess coliform contain pathogens that could make people sick?

The coliform count is an indicator of a possible sanitation failure, not a confirmation that pathogens might be present. Further testing would be necessary to confirm actual pathogens. The overall risk to frozen dessert products is very low considering the cold temperature of the product. The cold temperature does not allow for the rapid growth of pathogens.

11. Does a standard plate count above the standard of 50,000 bacteria per milliliter present a public health hazard?

The limit of 50,000 bacteria per milliliter is intended as a guideline. The standard plate count usually represents harmless organisms, especially if there are no coliform associated with the sample. Spoilage organisms usually begin to affect the frozen dessert product in numbers much greater than 50,000.