

**Conference for Food Protection
2020 Issue Form**

Issue: 2020 I-023

Council Recommendation:	Accepted as Submitted _____	Accepted as Amended _____	No Action _____
Delegate Action:	Accepted _____	Rejected _____	

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Issue History:

This is a brand new Issue.

Title:

Amend Food Code to Address New Reusable Scenarios in Food Retail

Issue you would like the Conference to consider:

The language in Food Code 2017 does not provide adequate guidance on allowed practices surrounding several emerging reuse scenarios in food retail. These include but are not limited to the use of customer-owned containers in restaurants, markets, temporary food facilities and closed loop schemes.

The mixed terms used in the current Code, specifically section 3-304.17, are undefined and therefore the scenarios intended for regulation are ambiguous. This ambiguity, in conjunction with an exception as opposed to rule-based orientation makes for guidance that resists complete understanding by either agency or industry audiences.

Public Health Significance:

As the "conscious consumption" movement grows, consumers increasingly demand sustainable ways to process, store, and procure food. Food handling regulations must accommodate these new ways to reduce waste and excess packaging. Reducing uncertainty in the language of the regulation encourages food handling practices that are both safe and sensitive to these emerging values.

What's more, updates to the Food Code will have strong downstream benefits for state and regional regulatory agencies who rely on federal synthesis of pertinent issues in the retail and food service landscape. Significant time and resources can be saved by agencies and industry alike with the adoption of guidance that is clear and uniformly enforceable. Consensus on comprehensive reusable standards by the Conference is critical for progress, and with a four year interval between Food Code updates, the time to address these scenarios is now.

Recommended Solution: The Conference recommends...:

that section 3-304.17 proactively address a wider range of scenarios by clarifying safety standards surrounding the use of reusable containers, including but not limited to:

1. Replacement of conflicting or ambiguous terms: Taking inspiration from recent CA legislation (see "Assembly Bill No 619 in Supporting Attachments), define reusable containers as those either provided by or returned to the food facility.
2. Better identify the scenarios being regulated: Stipulate that for ready-to-consume TCS foods, reusable containers must be designed and constructed for reuse per Section 3-304.17(B)(1) of the Code. Remove the arbitrary distinction between food and beverage handling scenarios, with the exception of water vending.

The Conference further recommends a letter be sent to the FDA requesting that the most current edition of the Food Code be amended to replace section 3-304.17 with new language below. Explanatory notes are found in the attached content document entitled "Refilling Reusables Language".

3-304.17 Refilling Returnables Refilling Reusable Containers

~~(A) Except as specified in ¶¶ (B)–(E) of this section, empty containers returned to a FOOD ESTABLISHMENT for cleaning and refilling with FOOD shall be cleaned and refilled in a regulated FOOD PROCESSING PLANT.~~

(A) A reusable container is designed and constructed for reuse in accordance with the requirements specified under Part 4-1 and 4-2.

~~(B) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with FOOD if the FOOD container is:~~

(B) Only reusable containers returned to a food establishment may be refilled with ready-to-eat or TCS foods either by a food employee or the consumer, except as specified in ¶¶ (1)-(2) of this section.

~~(1) Designed and constructed for reuse and in accordance with the requirements specified under Part 4-1 and 4-2;~~

(1) A consumer-owned container not specifically designed for reuse may be refilled by the same consumer with a non-TCS food or beverage in a contamination-free transfer process.

~~(2) One that was initially provided by the FOOD ESTABLISHMENT to the CONSUMER, either empty or filled with FOOD by the FOOD ESTABLISHMENT, for the purpose of being returned for reuse;~~

(2) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

~~(3) Returned to the FOOD ESTABLISHMENT by the CONSUMER after use;~~

~~(4) Subject to the following steps before being refilled with FOOD: (a) Cleaned as specified under Part 4-6 of this Code;~~

~~(b) Sanitized as specified under Part 4-7 of this Code; P and~~

~~(c) Visually inspected by a FOOD EMPLOYEE to verify that the container, as returned, meets the requirements specified under Part 4-1 and 4-2. P~~

~~(C) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with BEVERAGE if:~~

~~(1) The BEVERAGE is not a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD-~~

~~(2) The design of the container and of the rinsing EQUIPMENT and the nature of the BEVERAGE, when considered together, allow effective cleaning at home or in the FOOD ESTABLISHMENT;~~

~~(3) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;~~

~~(4) The CONSUMER-owned container returned to the FOOD ESTABLISHMENT for refilling is refilled for sale or service only to the same CONSUMER; and-~~

~~(5) The container is refilled by:~~

~~(a) An EMPLOYEE of the FOOD ESTABLISHMENT, or-~~

~~(b) The owner of the container if the BEVERAGE system includes a contamination-free transfer process as specified under §§ 4-204.13(A), (B), and (D) that cannot be bypassed by the container owner.~~

(C) Establishment-owned, managed, or provided reusable containers returned to a food establishment for refilling with food shall be cleaned as specified under Part 4-6 and sanitized as specified under Part 4-7 of this Code prior to refilling.

~~(D) Consumer-owned, personal take-out BEVERAGE containers, such as thermally-insulated bottles, nonspill coffee cups, and promotional BEVERAGE glasses, may be refilled by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified under §§ 4-204.13(A), (B), and (D).~~

(D) Reusable containers returned to a food establishment for refilling by a food employee or the consumer must be refilled in a contamination-free transfer process such that:

(1) Any consumer-owned container is isolated from food-serving surfaces or such surfaces are sanitized by an employee after each filling.

(2) The food establishment shall prepare, maintain and adhere to written procedures to prevent cross-contamination which additionally address waste water disposal. The food establishment shall make the written procedures available to the enforcement agency upon request.

~~(E) CONSUMER-owned containers that are not FOOD-specific may be filled at a water-VENDING MACHINE or system.~~

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Content Documents:

- "Refilling Reusables Language"
- "Refilling Reusables Proposed Requirements"

Supporting Attachments:

- "Assembly Bill No. 619"

It is the policy of the Conference for Food Protection to not accept Issues that would endorse a brand name or a commercial proprietary process.

3-304.17 Refilling Reusable Containers

(A) A reusable container is designed and constructed for reuse in accordance with the requirements specified under Part 4-1 and 4-2.

Define acceptable reusable container under scope of the code.

(B) Only reusable containers returned to a food establishment may be refilled with ready-to-eat or TCS foods either by a food employee or the consumer, except as specified in ¶¶ (1)-(2) of this section.

(1) A consumer-owned container not specifically designed for reuse may be refilled by the same consumer with a non-TCS food or beverage in a contamination-free transfer process.

This allows items like shelled nuts, bread, or produce to be placed in a cloth bag or similar by the consumer. These items are considered ready-to-eat foods, but should not be subjected to container restrictions or mandatory sanitization per consumer.

(2) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

As in the 2017 code, water vending is accepted from additional restrictions. The equivalent clause is simply moved for readability.

(C) Establishment-owned, managed, or provided reusable containers returned to a food establishment for refilling with food shall be cleaned as specified under Part 4-6 and sanitized as specified under Part 4-7 of this Code prior to refilling.

Encompasses clear guidance for emerging scenarios such as rented vessels or closed loop schemes in a variety of settings (i.e. dine-in, take-out, or temporary food facilities).

(D) Reusable containers returned to a food establishment for refilling by a food employee or the consumer must be refilled in a contamination-free transfer process such that:

(1) Any consumer-owned container is isolated from food-serving surfaces or such surfaces are sanitized by an employee after each filling.

(2) The food establishment shall prepare, maintain and adhere to written procedures to prevent cross-contamination which additionally address waste water disposal. The food establishment shall make the written procedures available to the enforcement agency upon request.

Consistent with California Assembly Bill No. 619. See supporting documents.

Filling Reusable Containers : Proposed Regulatory Requirements by Scenario

	Food establishment-owned reusable container	Consumer-owned reusable container	Consumer-owned container
Refilled by Food Employee	Must be cleaned as specified under Part 4-6 and sanitized as specified under Part 4-7 of this Code prior to refilling. Refilling must be a contamination-free process.	Any consumer-owned container is isolated from food-serving surfaces or such surfaces are sanitized by an employee after each filling. Refilling must be a contamination-free process.	Prohibited
Refilled by Consumer	Must be cleaned as specified under Part 4-6 and sanitized as specified under Part 4-7 of this Code prior to refilling. Refilling must be a contamination-free process.	Any consumer-owned container is isolated from food-serving surfaces or such surfaces are sanitized by an employee after each filling. Refilling must be a contamination-free process.	May be refilled by the same consumer only with non-TCS food or beverages. Any consumer-owned container is isolated from food-serving surfaces or such surfaces are sanitized by an employee after each filling. Refilling must be a contamination-free process.
All cases:	The food establishment shall prepare, maintain and adhere to written procedures to prevent cross-contamination which additionally address waste water disposal. The food establishment shall make the written procedures available to the enforcement agency upon request.		

Assembly Bill No. 619

CHAPTER 93

An act to amend Sections 114121 and 114353 of the Health and Safety Code, relating to retail food facilities.

[Approved by Governor July 12, 2019. Filed with Secretary of State July 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 619, Chiu. Retail food: reusable containers: multiuse utensils.

Existing law, the California Retail Food Code, provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code, and a person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

Existing law requires returned empty containers intended for refilling with food or beverage to be cleaned and refilled in an approved facility, except that consumer-owned containers may be refilled and returned to the same consumer if the container is refilled by an employee of the food facility or the owner of the container and the dispensing system includes a contamination-free transfer process.

This bill would instead provide that clean consumer-owned containers provided or returned to the food facility for filling may be filled by either the employee or the owner of the container, and would require the food facility to isolate the consumer-owned containers from the serving surface or sanitize the serving surface after each filling. The bill would require the consumer-owned containers to be designed and constructed for reuse, as specified. The bill would require the food facility to prepare, maintain, and adhere to written procedures to prevent cross-contamination, and to make the written procedures available to the enforcement agency.

Existing law defines a temporary food facility, for purposes of the California Retail Food Code, as a food facility approved by the enforcement officer that operates at a fixed location for the duration of an approved community event or at a swap meet and only as a part of the community event or swap meet. Under existing law, a temporary food facility is required to provide single-use articles for use by the consumer.

This bill would authorize a local enforcement agency to allow a temporary food facility to use multiuse utensils that are cleaned, rinsed, and sanitized at either the temporary food facility or an approved food facility.

Because any violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 114121 of the Health and Safety Code is amended to read:

114121. (a) Except as specified in subdivisions (b), (c), and (d), returned empty containers intended for filling with food or beverage shall be cleaned and filled in an approved facility.

(b) (1) Clean consumer-owned containers provided or returned to the food facility for filling may be filled and returned to the same consumer if the container is filled by either an employee of the food facility or the owner of the container. For the purposes of this section, a consumer-owned container shall be designed and constructed for reuse in accordance with Section 3-304.17(B)(1) of the 2017 Food Code published by the federal Food and Drug Administration.

(2) The food facility shall either isolate the consumer-owned containers from the serving surface or sanitize the serving surface after each filling.

(c) The food facility shall prepare, maintain, and adhere to written procedures to prevent cross-contamination, as described in Section 113986, and the written procedures shall address waste water disposal. The food facility shall make the written procedures available to the enforcement agency upon request or at the time of an inspection.

(d) Consumer-owned containers that are not food specific may be filled at a water vending machine or system.

(e) The food facility shall ensure compliance with the handwashing requirements specified in Article 4 (commencing with Section 113952) of Chapter 3.

SEC. 2. Section 114353 of the Health and Safety Code is amended to read:

114353. (a) Except as provided in subdivision (b), a temporary food facility shall provide only single-use articles for use by the consumer.

(b) Based on local environmental conditions, location, and similar factors, including the type and number of utensils, as defined in Section 113934, the volume and storage of potable water for warewashing, as defined in Section 113940, and waste water capacity, the local enforcement agency may allow a temporary food facility to use multiuse utensils that are cleaned, rinsed, and sanitized pursuant to Chapter 5 (commencing with Section 114095), as applicable, at either the temporary food facility or an approved food facility.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that

may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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