YUMA COUNTY BOARD OF SUPERVISORS
ORDINANCE NO. 07-04

YUMA COUNTY HEALTH ORDINANCE

WHEREAS: pursuant to the Arizona Department of Health Services Delegation Agreement, the Arizona Food Code and the Arizona Administrative Code, Title 9, the Yuma County Sanitary Code is currently in effect; and

WHEREAS: the Yuma County Sanitary Code is hereby revised and those revisions have been accepted by the Board of Supervisors; and

WHEREAS: the Yuma County Board of Supervisors followed the proper processes in providing public notice and holding a public hearing as required by Arizona Revised Statutes 11.251.08,

NOW, THEREFORE BE IT ORDAINED that the Yuma County Board of Supervisors adopts the Yuma County Health Ordinance No. 07-04 as follows, and by this action the Yuma County Sanitary Code is repealed in its entirety.

YUMA COUNTY HEALTH ORDINANCE

1. Purpose

The rules and regulations adopted and contained herein, and the enforcement thereof by the District, are designed and intended to provide minimum standards for the protection of the health of the people of Yuma County and to prevent the creation or maintenance of unhealthful, unsanitary conditions or public health nuisances, and shall be liberally construed to accomplish these purposes.

2. Repeal of Conflicting Ordinances or Regulations

All regulations and ordinances, and portions of regulations or ordinances of Yuma County in conflict with this Yuma County Health Ordinance, or inconsistent with the regulations of this Ordinance, are hereby repealed to the extent necessary to give this Health Ordinance full force and effect. The Yuma County Sanitary Code first adopted by the Yuma County Board of Supervisors, on May 6, 1968 and November 4, 1985 and as subsequently amended, is repealed by this Yuma County Health Ordinance as of the date of adoption.

3. Food Establishments

The Arizona Food Code and Arizona Administrative Code, Title 9, Chapter 8, Article 1 is adopted and incorporated into these rules and regulations by reference as if set forth in full herein and shall be in full force and effect in Yuma County in accordance with the delegation agreement with the Arizona Department of Health Services, for the regulated activities outlined in Section 5, and to the extent that the provisions of the Arizona Food Code and Arizona Administrative Code Title 9, Chapter 8, Article 1 are not expressly modified by the provisions of these rules and regulations. All food establishments in the county shall comply with these rules and regulations and with the Arizona Food Code to the extent it is consistent with the express provisions of these regulations.

4. Definitions

The following definitions shall apply throughout this Health Ordinance, unless a different meaning is clearly indicated by the context or is stated in any of the several sections.

A. "Approved" or "approval" means acceptable to the District and so stated in writing.

B. "Comply" or "compliance" means meeting the requirements of these rules and regulations.

C. "Compliance Date" means the date by which the property must meet the requirements of the rules and regulations.

D. "County" means Yuma County.

E. "Director" means Director of Yuma County Public Health Services District.

F. "District" means the Yuma County Public Health Services District.

G. "Food Worker" means any person who handles, prepares, serves, sells or gives away food for consumption or any person who handles utensils and equipment appurtenant thereto. The term does not include persons in establishments regulated under this Health Ordinance, who only handle food or drink in closed crates, cartons, bottles, packages or similar containers in which no portion of the food or drink is exposed to contamination through such handling.

H. "Health Officer" means the Director of the Yuma County Public Health Services District or his/her authorized representative.

I. "Hearing Officer" means a person appointed by the Director of the Yuma County Public Health Services District to conduct a hearing.

J. "Person" includes any natural individual, firm, trust, partnership, association, institution, public body, corporation, or any other entity and includes the plural as well as the singular, feminine as well as the masculine.

5. Regulated Activities and Activities Requiring a License

A. The following are a list of activities regulated by the District in accordance with the delegation agreement(s) between the District and the Arizona Department of Health Services or the Arizona Department of Environmental Quality:

(1) Bathing Place Inspections, Public and Semi-Public Swimming Pools;
(2) Bottled Water Manufacturers;
(3) Food Establishments, including but not limited to: Restaurants, Food Processors, Temporary and Mobile Food Service, Retail Food Stores, Warehouses, Bakeries, Meat Markets, Hospitals, Nursing Homes, School Cafeterias, Day Care Food Service Operations, Board and Care Facilities, Bars and Ice Manufacturers;
(4) Hotel and Motel Facilities;
(5) Public and Charter Schools;
(6) Trailer Coach and Mobile Home Parks;
(7) Special Events; and
(8) Open Burning.

6. Food Worker Certificates

A. Each person operating, or applying for a license to operate a food establishment, shall require each food worker to obtain a food worker certificate from the District.

B. Such certificate shall be obtained within thirty (30) days after beginning employment with the food establishment.

C. The District shall issue a certificate when the applicant has completed the food worker examination or demonstrates he/she is knowledgeable in food establishment sanitation and food safety.

D. Current Serv-Safe certification may be accepted to meet the requirements of the food worker certificate.

E. In every food establishment, all food worker certificates for each person employed and engaged in food handling shall be prominently posted where it can be inspected by the Health Inspector.

7. Responsibilities – Right of Inspection

A. The owner, person in charge or control, lessee, tenant, and occupant of every building, establishment, premises, place or parcel of land, whether vacant or improved in whole or in part, has the duty to take all necessary, reasonable and usual precautions to keep, place and preserve the same in such condition, and to conduct and maintain the same in such manner, that it shall not be dangerous or deleterious to the public or in violation of the rules and regulations or other provisions as described in County Ordinances or Codes or the regulations of the Arizona Department of Health Services and Department of Environmental Quality.

B. No person shall refuse to allow the District to inspect fully, permitted premises or facilities at any reasonable time to determine compliance with this Ordinance, and no person shall resist or interfere with the District in the discharge of its duties. If a person refuses to comply with inspection, the District may take action to obtain a warrant pursuant to section 12.C. or suspend or revoke such permit pursuant to section 11.

8. Permits, Service, and Other Requirements

A. No person shall conduct an operation or an establishment for which a permit is required without holding the necessary and valid permit to do so, or otherwise than in compliance with the rules and regulations in this Health Ordinance.

B. Permit application shall be made on forms provided by the District and shall be completed in all pertinent details.

C. (1) No application for permit shall receive approval and no permit shall be issued and no facility for which a permit is required shall be placed in operation until the applicant demonstrates to the District full compliance with the provisions of this Health Code.

(2) The Health Officer may refuse to issue a permit to any person if the person fails to demonstrate sufficient reliability, expertise and competence to fulfill the requirements for a permit and comply with applicable rules and regulations of this Health Ordinance.

D. Any person denied a permit based on Section 8.C. may exercise the following options:

(1) Request, in writing, that the Health Officer specify conditions necessary to provide reasonable assurance that full compliance with provisions of this Health Ordinance will be achieved. The Health Officer within five (5) working days of the request shall specify said conditions; or

(2) Request in writing a hearing before the Hearing Officer, as specified in Section 10.

E. In cases where the District requires the submission of plans and specifications, no person shall commence construction unless the required plans have been approved. It shall be the full responsibility of said person that construction be in conformance with the approved plans and specifications.

F. (1) Permits are valid from the date of issuance until the date of expiration unless suspended or revoked prior thereto.

(2) Permit renewal fees become due on the date of expiration.

(3) A permit delinquency fee becomes due for failure to pay the permit fee within one calendar month of the permit renewal fee due date.

G. No permit is transferable from person-to-person or place-to-place. A person who changes the format, use or operation of an existing licensed establishment shall immediately apply for a new permit.

H. Each permit certificate must be kept at the establishment, premises or vehicle designated, and displayed in a conspicuous place, easily seen by the patrons and health officer. Where practicable, permits shall be framed and protected against soiling.

9. Fees

A. No permit or certificate shall be issued**,** and no permit or certificate is valid**,** until the fee is received by the District.

B. Fees for Health Services shall be paid according to the Fee Schedule adopted by Resolution of the Board of Directors of the District.

C. The District's Fee Schedule may be modified by a Resolution of the Board of Directors of the District.

10. Rejection of Application --Right to Hearing

A person who has been denied a permit may, within 15 days of mailing the notice of rejection or denial, request a hearing before a Hearing Officer to show cause why a permit should be issued.

11. Suspension and Revocation of Permits

A. Suspension of Permit:

(1) When the Health Officer finds that a permit holder or operator has failed to comply with a notice of violation of this Ordinance or that there exists on the permitted premises such a severe and imminent health hazard as to require emergency action, and incorporates a finding to that effect in its order, summary suspension of the permit may be ordered pending proceedings for revocation or other action.

(2) Upon suspension of the permit, the holder of the permit may immediately move to vacate the suspension order and the Hearing Officer shall hear such motion within five (5) days. In no event may a summary suspension remain in effect for more than twenty-five (25) days.

a. The Hearing Officer shall issue a decision, along with findings of fact, either upholding or vacating the summary suspension, at the conclusion of the hearing or if necessary, within twenty-four (24) hours of the hearing.

(3) Upon suspension of the permit, the establishment will cease operations and the premises will thereupon be posted closed by the Health Officer. The closure sign will be posted in a conspicuous place on the premises, clearly visible to the public, and will remain in place until removal is authorized by the Health Officer, the summary suspension is vacated after a hearing or the twenty-five (25) summary suspension expires.

(4) The Health Officer may vacate the summary suspension of the license upon a finding that the conditions on the premises or in the establishment no longer present a severe and imminent health hazard.

B. Revocation of Permit:

(1) The Health Officer may, after providing opportunity for hearing, revoke a permit for serious or repeated violations of any of the requirements of this Health Ordinance or for interference with the Health Officer or other regulatory authority in the performance of their duties.

(2) Prior to revocation, the Health Officer shall notify, in writing, the holder of the permit, or the person in charge, of the specific reason(s) for which the permit is to be revoked and that the permit shall be revoked at the end of the twenty (20) days, following service of such notice, unless a written request for hearing is filed with the Health Officer by the holder of the permit within such twenty (20) day period, revocation of the permit becomes final. If a request for hearing is timely filed, the hearing before the Hearing Officer shall be held within twenty (20) days of receipt of the request.

(3) Upon delivery of notice of permit revocation, the establishment will thereupon be posted with a warning sign noting that said establishment may not meet minimal health standards. This sign will be posted in a conspicuous place on the premises, clearly visible to the public, and will remain in place until removal is authorized by the Health Officer.

(4) Service of Notices.

a. A notice provided for in this Health Ordinance is properly served when it is delivered to the holder of the permit, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority.

(5) Hearings.

a. The Director of the District shall appoint a Hearing Officer to conduct a hearing. Hearings held pursuant to the provisions of this section shall be conducted in the same manner as hearings are conducted pursuant to §A.R.S. 41-1061 et seq.

(6) The Hearing Officer shall issue its decision, either revoking the permit or denying revocation of the permit, at the completion of the hearing. The written decision shall include findings of fact and conclusions of law supporting the Hearing Officer's decision.

(7) The Hearing Officer's decision is final and becomes effective upon service of the decision, unless an appeal is filed to the Director, within fifteen (15) days after receiving the Hearing Officer's decision.

(8) Upon appeal, the Director may affirm, modify or vacate the Hearing Officer's decision. The Director shall issue his/her decision within thirty (30) days of receipt of the notice of appeal.

a. Appeals shall be limited to the record of the proceeding before the Hearing Officer. The record of the hearing shall include all materials in the Hearing Officer's file and all evidence admitted at the hearing.

b. No new evidence will be considered on appeal.

(9) Application after Revocation.

a. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit.

12. Public Nuisance Violations

A. Prohibited Conditions - Generally

(1) It shall be unlawful, and considered a public nuisance per se, to make use of any lot, parcel, or piece of property, in such a way as to create conditions which are specifically declared public nuisances dangerous to public health in accordance with A.R.S. § 36-601(A).

B. Specific Prohibited Conditions

(1) Rodents, Insects and Vermin – The infestations by a harborage of rodents, lice bedbugs, fleas, roaches, flies or other arthropods of public health significance, in or about any premises is hereby declared to be dangerous to public health. No person shall cause, maintain, or within his control, permit such infestations or harborage. The owner, occupant or person in control of any place or premises shall take all reasonable measures to prevent such infestation or harborage and upon notification from the District to do so, shall take all necessary and proper steps to eliminate the infestation or harborage and to prevent its recurrence.

(2) Mosquitoes – No person shall cause, maintain or within his control, permit any accumulation of water in which mosquitoes breed or are likely to breed. The owner, occupant, or person in control of any place where mosquitoes are breeding or which constitutes a breeding place for mosquitoes shall take all necessary and proper steps to eliminate the mosquito breeding and to prevent its recurrence through the elimination of or the institution of necessary control measures at mosquito breeding sites.

C. Investigation

(1) Inspection - The Health Officer shall review all reported violations of this Ordinance. Upon receiving a report of a public nuisance violation, the Health Officer shall inspect the site of the alleged violation. During an inspection, the Health Officer shall take careful and comprehensive notes as to the condition and existing uses of the subject property, location, property owner and address, and note the specific, applicable provisions of A.R.S. §36-601(A).

(2) Entry for Purposes of Inspection or Abatement - When the Health Officer deems it necessary to enter a building, structure or premises within its jurisdiction for the purpose of inspecting a possible nuisance, and is refused entrance, the Health Officer may take a complaint under oath to the Justice of the Peace for a warrant directing the sheriff or other peace officer to accompany the Health Officer to inspect the premises between the hours of sunrise and sunset. If upon entry, the Health Officer finds an immediate and significant risk to public health, the Health Officer may destroy, remove, or prevent such nuisance, source of filth, or cause of sickness, between the hours of sunrise and sunset, pursuant to A.R.S. §36-603.

D. Cease and Desist

(1) When the Health Officer has reasonable cause to believe, from information furnished to such officer or from investigation made by such officer, that any person is maintaining a nuisance or engaging in any practice contrary to this Health Ordinance or rules of the state, he/she may forthwith serve upon such person by certified mail, in person or by designee, a Cease and Desist Order requiring the person upon receipt of the order to cease and desist from such act.

(2) Within fifteen (15) days after receipt of the order, the person to whom the order is directed may request a hearing to determine whether the order is reasonable and just, and the practice engaged in is contrary to this code.

(3) If a person requests a hearing within fifteen (15) days after receipt of the order, the Health Officer or his designee shall hold a hearing within a reasonable time thereafter, to determine whether the order is reasonable and just and the practice engaged in is contrary to this Health Ordinance or the regulations of the state.

(4) Upon the failure or refusal of a person to comply with the order of the Health Officer or if a person to whom the order is directed does not request a hearing and fails or refuses to comply with the Cease and Desist Order served under the provisions of this section, the Health Officer or designee may file an action in the Superior Court, restraining and enjoining the person from engaging in further acts.

E. Notice of Violation

(1) If the Health Officer determines that a violation is occurring on the subject property, he/she may serve notice on the property owner/occupant of the violation(s) in order to have the matter brought directly before the Hearing Officer.

(2) The notice of violation shall include:

a. A specific cite as to the nature of the violation, the section of the code violated, information of possible penalties if violation is not ceased and steps necessary to bring the subject property into compliance;
b. the date, time and location of the hearing on the violation and a copy of the Health Ordinance;
c. a statement that the Defendant or Defendant's Attorney shall notify the Hearing Officer in writing at least five (5) days before the hearing if he or she will be represented by an Attorney; and
d. a deadline date for compliance to vacate hearing.

(3) No notice shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific violation, if the notice contains either a written description or reference to the applicable section.

(4) The Notice of Violation will be served on the property owner and/or occupant by the Health Officer at least ten (10) days before the hearing. If the Health Officer is unable to personally serve the Notice of Violation, it may be served as provided for by alternative methods of service in the Arizona Rules of Civil Procedure. If a Notice of Violation cannot be served personally by the Health Officer, then it must be served by an alternative method at least 30 days before the hearing.

(5) The Health Officer is required to file a copy of the Notice of Violation and any other appropriate documentation related to the case with the Hearing Officer.

(6) The Director will appoint a Hearing Officer to conduct hearings pursuant to this section. The hearings shall be conducted in the same manner as hearings are conducted pursuant to A.R.S. §41-1061 et seq.

(7) The Hearing Officer shall either issue or deny a compliance order and shall make a finding regarding a civil penalty pursuant to A.R.S. § 36-183.04(G) and (H).

(8) A compliance order issued by the Hearing Officer is final and enforceable unless the person files an appeal to the Director within fifteen (15) days after receiving the compliance order.

(9) On appeal the Director may affirm, modify or vacate the Hearing Officer's decision. The Director shall consider the factors in A.R.S. §36-183.04(H), in reaching his/her decision.

a. Appeals shall be limited to the record of the proceeding before the Hearing Officer. The record of the hearing shall include all materials in the Hearing Officer's file and all evidence admitted at the hearing.

b. No new evidence will be considered on appeal.

F. Nuisance Abatement, Assessment and Lien

(1) Notwithstanding any other provision of this Ordinance, when a nuisance, source of filth or cause of sickness exists on private property, the Health Officer shall order the owner or occupant to remove it within twenty-four (24) hours at the expense of the owner or occupant.

a. The order may be delivered to the owner or occupant personally, or left at the owner or occupant's usual place of abode or served upon the owner or occupant in the same manner as provided for service of process under the Arizona rules of civil procedure.

(2) If the Abatement Order is not complied with, the Health Officer may impose a civil penalty pursuant to A.R.S. §183.04 and cause the nuisance, source of filth or cause of sickness to be removed.

(3) Assessment

a. After the District, acting through its employees, contractors or both has completed the actions necessary to abate or remove a nuisance or source of filth under A.R.S. §36-602(A), the Health Officer shall issue an Assessment Statement to the owner of the property on which such nuisance or source of filth was located. The Assessment Statement shall include the following information:

i) A description of the assessed costs, which shall include the actual costs of the removal or abatement, incidental costs, and the costs of any additional inspections;

ii) Notification that the property owner must pay the assessed costs within thirty (30) days after receipt of the Assessment Statement or by such other date as may be specified for payment in the Assessment Statement unless an appeal is requested;

iii) Notification that the property owner may appeal the assessment to the Hearing Officer in writing within thirty days after receipt of the Assessment Statement; and

iv) Notification that failure to pay the assessed costs may result in a lien being placed on the property on which the nuisance or source of filth was located.

(4) Request for Hearing

The property owner may appeal the assessment to the Hearing Officer by filing a written request for a hearing within thirty days after receipt of the Assessment Statement.

a. After a hearing, the Hearing Officer may, sustain, modify or revoke the Assessment Statement.

b. If the Hearing Officer's decision sustains or modifies a cost assessment following an appeal of an Assessment Statement, the assessed costs must be paid within (30) days of the Hearing Officer's decision or by such other time as may be specifically provided by the Hearing Officer.

(5) Lien on Property

If the property owner does not pay the assessed costs within the time for payment provided for, the Health Officer may thereafter assess the lots or tracts of land on which the nuisance was abated or removed.

a. The assessment recorded under this Ordinance is prior and superior to all other liens, obligations or other encumbrances, except liens for general taxes and prior recorded mortgages.

b. The assessment, from the date of its recording with the County Records, is a lien on the lot or tract of land until paid.
c. The Health Officer may bring an action to enforce the lien in superior court at any time after the recording of the assessment, but failure to enforce the lien by this action does not affect its validity.
d. A prior assessment for this purpose is not a bar to a subsequent assessment or assessments and any number of liens on the same lot or tract of land may be enforced in the same action.
e. An assessment or lien recorded for this purpose does not limit, restrict or otherwise affect the authority of the county to take additional enforcement action as authorized by this Ordinance or as otherwise authorized by law.
f. This Ordinance provides notice to all lien holders.

13. Notice to Appear

A Health Officer and peace officers shall have the authority to issue a notice to appear under the same conditions and procedures as set forth in A.R.S. § 13-3903 for any violation of this Ordinance (A.R.S. §§36-183.06 and 36-191).

14. Violations

A. Violations of this Health Ordinance may be redressed by proceedings pursuant to §§A.R.S. 36-601(B) and 36-183.03 et seq.; by injunctive relief in Superior Court; or by any other applicable remedies provided by law. In addition, persons who violate a provision of this Health Ordinance are guilty of a class 3 or class 2 misdemeanor as provided in A.R.S. §§36-183.07 and 36-191 and may be punished accordingly.

B. Notice is accomplished by the issuance of either a Notice of Violation, Cease and Desist Order, Abatement Order, Permit Revocation or by filing a complaint in Superior Court.

15. Posting of Notices of Violation

The Health Officer may, for the purpose of notification to the public, post a warning sign at any premises or establishment describing the nature of legal action being taken against said premises or establishment under the provisions of the Health Ordinance.

16. Severability

Should any section, sentence, clause, phrase or word of this Health Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of said Health Ordinance shall not be affected thereby.

Adopted this 16th day of April, 2007, Item No. 28.
CASEY PROCHASKA, Chairman of the Board/s/
ATTEST: SUE STALLWORTH, Clerk of the Board/s/
APPROVED AS TO FORM: ROBERT L. PICKELS, Chief Deputy County Attorney/s/
A FULL COPY OF THE AMENDED DOCUMENT IS AVAILABLE FOR REVIEW AT WWW.CO.YUMA.AZ. OR BY CALLING THE PUBLIC HEALTH SERVICES DISTRICT AT (928) 317-4550.