

“B” (City Council Ordinance - Amortization)

Exhibit – “B”

Exhibit-B

ORDINANCE NO. O-XX-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA ADDING SECTION 18.46.080 TO THE COLTON MUNICIPAL CODE RELATING TO AMORTIZATION PROCEDURES FOR CERTAIN NONCONFORMING USES

WHEREAS, the City of Colton (“City”) is a California municipal corporation organized pursuant to the California Constitution; and

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, Colton Municipal Code, Section 18.46.030 (Nonconforming Uses of Land) and 18.46.050 (Nonconforming Uses of Structures) authorize the continuation of nonconforming uses within certain parameters; and

WHEREAS, Sections 18.46.030 and 18.46.050 do not require the amortization and eventual elimination of nonconforming uses; and

WHEREAS, Colton’s historical development pattern includes the development of manufacturing, industrial and warehouse uses within, or in close proximity to, conforming and nonconforming residential developments’ and

WHEREAS, as manufacturing, industrial and warehouse uses have modernized and intensified over the years, including the proliferation of e-commerce businesses, they have also created land use and environmental conflicts with existing residential land uses, including the creation of noise, traffic, dust, vibration and odor impacts originating from nonconforming manufacturing, industrial and warehouse uses; and

WHEREAS, these impacts are described and detailed in a September 2022 Paper authored by the California Attorney General’s Office entitled “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act” which describes the serious health impacts created by the proliferation of warehouse and manufacturing uses near residential land uses and recommends minimum siting criteria for these uses; and

WHEREAS, in 2024, the Governor signed AB 98 which now imposes certain requirements on cities and counties AB 98 mandates several environmental and community health protections including the imposition of regulations concerning the construction and operation of new or expanded warehouses that are 250,000 square feet or larger; and requires:

- Installation of energy-saving features such as solar panels and electric vehicle charging stations; and

- 1 • Transition to zero-emission forklifts by 2030; and
- 2 • Establishment of buffer zones between warehouses and sensitive areas such as homes,
- 3 schools and parks; and
- 4 • Establishment of truck routes that avoid residential areas

5 **WHEREAS**, the requirements of AB 98 do not apply to existing nonconforming
6 warehouse and manufacturing uses and it is necessary for cities and counties to consider
7 amortization as a tool to modernize and/or transition these uses, especially in areas that are
8 contain residential and sensitive uses; and

9 **WHEREAS**, it is well established that a city can eliminate the vested rights of legal
10 nonconforming uses pursuant to its police powers, without compensation after a “reasonable
11 amortization period.” (United Business Com. v. City of San Diego, 91 Cal.App.3d 156, 179
12 (1979); See also Los Angeles v. Gage, 127 Cal.App.2d 442, 453, 460 (1954) - use of a reasonable
13 amortization scheme does not constitute a taking of property, as it “provides an equitable means
14 of reconciliation of conflicting interests in satisfaction of due process requirements”); and

15 **WHEREAS**, such amortization periods are designed to assure that an owner has received
16 the beneficial use of their investment in the use.; and

17 **WHEREAS**, courts have held that the critical factor in determining appropriateness is the
18 reasonableness of the amortization period - meaning that if the amortization period is reasonable,
19 termination is constitutional and represents an equitable means of reconciling the public interest
20 in uniform zoning with the private burden of lost investment; and

21 **WHEREAS**, the intent of this ordinance is to establish procedures for the eventual
22 amortization of nonconforming uses, with a focus on amortization nonconforming uses that create
23 deleterious impacts on residential uses in Colton; and

24 **NOW, THEREFORE**, the City Council of the City of Colton, California, does ordain as
25 follows:

26 **SECTION 1.** Incorporation of Recitals. The City Council hereby finds that all of the
27 foregoing recitals and the staff report presented herewith are true and correct and are hereby
28 incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. General Plan Consistency Findings. The City Council of the City of
Colton finds that adoption of this provisions of this ordinance are consistent with the City of
Colton General Plan and Chapter 18 of the Colton Municipal Code since it promotes the public
health, safety and welfare and implements the following general plan policies and programs:

Land Use Element:

1 Goal LU-6: Minimize or eliminate land use conflicts where residences are in close
2 proximity to rail lines, freeways, and industrial businesses.

3 Policy LU-6.2: Discourage the establishment of incompatible uses in proximity to each
4 other.

5 Policy LU-6.6: Require that industrial businesses adjacent to residential neighborhoods
6 adopt and implement truck routing plans that avoid use of local streets to the greatest
7 extent practical.

8 Policy LU-4.5: Promote adaptive reuse of existing buildings as an alternative to new
9 construction.

10 Policy LU-11.5: Work with developers to encourage heavy industrial uses and uses
11 incompatible with residential or commercial development to locate along the Agua Mansa
12 Road corridor (defined as that area along the Santa Ana River south to South Riverside
13 Avenue, with West Agua Mansa Road on the west).

14 Mobility Element

15 Policy M-5.6: Ensure that the designated truck routes conform to the following
16 performance criteria below and amortization and termination/removal of nonconforming
17 industrial uses implements performance criteria by eliminating nonconforming uses that
18 generate truck traffic within residential neighborhoods and implementing the performance
19 criteria contained below.

- 20 • Truck routes must avoid intrusions into residential neighborhoods to limit noise,
21 vibration, and air quality impacts.
- 22 • To the extent feasible, truck routes will not be provided on local streets and on streets
23 with mostly residential frontage.
- 24 • Truck routes must be located on roadways that provide direct and convenient access
25 between Major Arterials and freeways (I-10 and I-215) and industrial and commercial
26 businesses.
- 27 • Truck routes must be located on roadways with the design and construction capacity
28 to accommodate truck traffic.

29 **SECTION 3.** Addition of Section 18.46.080 to the Colton Municipal Code. Section
30 18.46.080 of the Colton Municipal Code is hereby added to read as follows:

31 **“18.46.080 – Termination of Nonconforming Uses.**

32 A. The City Council of the City of Colton may order a nonconforming use to be
33 terminated within a reasonable amount of time, upon recommendation of the planning
34 commission. The planning commission shall conduct a public hearing after ten (10) days' written
35 notice to the owner of the nonconforming use and property owner, if different than the owner of
36 the use.

1 B. If the nonconforming user has not made a substantial investment in furtherance of
2 the use, or if the investment can be substantially utilized or recovered through a currently
3 permitted use, the order recommended by the Planning Commission may require complete
4 termination of the nonconforming use within a minimum of one (1) year after the date of the
5 order.

6 C. If the nonconforming user has made a substantial investment in furtherance of the
7 use, or if the investment cannot be substantially utilized or recovered through a currently
8 permitted use, the order recommended by the Planning Commission may require the complete
9 termination of the nonconforming use within a longer reasonable amount of time. Nonconforming
10 uses that are determined to be an imminent threat to the public health or safety may be terminated
11 immediately, pursuant to Chapter 8.04 of the Municipal Code.

12 D. In making its recommendation to terminate a nonconforming use and in
13 recommending a reasonable amount of time in which to terminate, the planning commission shall
14 consider the following:

- 15 1. The original construction date, amount of investment or original cost of the use or
16 structure and remaining useful life;
- 17 2. The present actual or depreciated value of the use or structure;
- 18 3. The remaining term of the lease, if any;
- 19 4. Adaptability of the land and improvements to a currently permitted use;
- 20 5. The cost of moving and reestablishing the use elsewhere;
- 21 6. Whether the use is significantly nonconforming, including whether it is sited
22 within nonconforming improvements;
- 23 7. Compatibility with the existing land use patterns and densities of the surrounding
24 neighborhood;
- 25 8. The proximity of the nonconforming use to residentially used property;
- 26 9. The threat to the public health, safety, and welfare posed by the continuance of the
27 nonconforming use or structure; and
- 28 10. Any other relevant factors.

The term "nonconforming use" when used in this section shall include nonconforming
uses, nonconforming structures, and nonconforming lots, consistent with the intent of this title.

E. This amortization section does not apply to any lawful nonconforming residential
uses. Failure to comply with the city council's order to terminate a nonconforming use shall
constitute a violation of this chapter and is a public nuisance subject to abatement in accordance
with Chapter 1.36 of this code or court order.

F. The Planning Commission upon recommendation made by the Development
Director in conjunction with other City Departments, may establish, and periodically update, a list
or data resource that identifies categories of nonconforming uses or structures with specific
metrics and operational characteristics, to develop a ranking system for use in the consideration of
prioritizing the termination of nonconforming uses or structures through amortization. In addition,
the Development Director may enact and shall publish any additional administrative policies and
procedures to effectuate the purposes of this Chapter, including but not limited to, administrative

1 policies and procedures to govern the conduct of hearings for the establishment of amortization
2 periods in order to implement the provisions of this Chapter.

3 G. Upon receipt of the recommendation from the Planning Commission, the City
4 Council shall hold a noticed public hearing to consider the recommended amortization period.
5 Notice of the hearing shall be provided to the owner or operator of the nonconforming use or
6 structure and the property owner at least 10 days prior to the hearing. Additional notice may also
7 be provided to surrounding property owners and/or tenants, at the discretion of the Development
8 Director.

9 H. The City Council shall consider the recommendations submitted by the Planning
10 Commission, and any testimony or evidence provided during the hearing, in order to determine
11 the amortization schedule for elimination of the nonconforming use or structure.

12 I. The City Council shall establish a maximum amortization period during which the
13 nonconforming use or structure shall be permitted to continue after considering the factors
14 contained in subsection (D) of this section. following in relation to the use or structure. The
15 determination of the City Council shall made in writing and shall be final.

16 1. A copy of the City Council's determination shall be delivered by certified
17 mail to the owner or operator of the nonconforming use or structure and to the property
18 owner(s).

19 2. Failure to comply with the City Council's determination to discontinue a
20 nonconforming use or structure shall be deemed a public nuisance in accordance with
21 California Government Code, Section 38771. The City is hereby authorized to abate the
22 nuisance in accordance with this Code or may pursue any alternative remedy to abate the
23 use authorized by this Code or state law.

24 J. Notice of amortization and termination of use. The Development Director shall
25 give notice by certified mail of the date upon which an amortization period will end to each
26 owner of record whose property, or use of property, is not in conformance with the regulations of
27 this Chapter, in those instances where an amortization period has be determined pursuant to this
28 Chapter.

Such notice shall be sent within fourteen (14) days of the determination by the City
Council. If the amortization period ends before or less than six (6) months after providing such
notice, the notice shall be given that the amortization period in each instance shall be not less than
six (6) months from the date the notice is sent. The notice shall set forth all pertinent provisions of
this Chapter, including the declared purposes thereof and the approved amortization term, as well
as the resolution adopted by the City Council evidencing such amortization term. Failure to send
notice by mail to any such owner where the address of such owner is not a matter of public record
shall not invalidate any proceedings under this Chapter. The Development Director shall be
authorized record a Notice of Amortization Term & Termination of Use with the County
Recorder, as provided for in California Government Code Section 27201(a).

K. Notice of termination and order to comply at conclusion of amortization period.
Notice of Termination of a nonconforming use and order to comply shall be served by the

1 Development Director at the end of the amortization period upon the owner of record whose
2 property contains such nonconforming use. In those instances, where the Development Director is
3 unable with reasonable effort to serve such notice to the property owner, such notice and order
4 shall be served within thirty (30) days of the end of the amortization period by delivering same to
5 an occupant of the structure containing the nonconforming use.

6 L. Request for a continuance of nonconformities beyond period of amortization
7 period. A request for a continuance of nonconformities beyond the period of amortization may be
8 granted as follows:

9 1. Grounds for Continuance. A nonconforming use or structure may be maintained
10 for a reasonable time beyond its period of amortization as specified in this Article if the Planning
11 Director makes the following determinations:

12 (A) Special Circumstances. That special circumstances apply to any such use or
13 structure that do not apply generally to others affected hereby; and

14 (B) Compatibility with Public Welfare. That such a continuance for a
15 prescribed period of additional time is in the public interest and will be reasonably
16 compatible with, and not detrimental to, the use of adjacent properties.

17 2. Application Process for Continuance. Any application for a continuance of a
18 nonconforming use or structure must be filed with the Planning Division no later than thirty (30)
19 days following the service of a Notice of Termination and Order to comply, or within thirty (30)
20 days following the continued termination date. An application for a continuance may be filed by
21 the owner of the property, a person with a power of attorney from the owner of the property, or a
22 lessee, if the terms of the lease permit the existing use. Fees shall be required in accordance with
23 a resolution of the City Council.

24 3. Determination by Development Director. Upon filing of a complete application,
25 the Development Director shall investigate the matter, give proper notice to the applicant, hold an
26 administrative hearing and make a decision thereon based on the criteria set out in this Section
27 and supported by written findings of fact within seventy-five (75) days from the date the
28 application is filed, or within such extended period of time as may be mutually agreed upon by
the applicant and the Development Director. The Development Director may impose such
conditions, including additional time extensions not to exceed two (2) additional years, as may be
deemed necessary for the compatibility of such nonconformity with adjacent properties.

M. Voluntary Compliance Agreement. The City Council is hereby authorized to enter
into a Voluntary Amortization Compliance Agreement with a business owner or property owner
in order to establish terms for compliance with the provisions of this Chapter or any other
measures necessary to address impacts on public health, safety, or welfare stemming from
nonconforming buildings or uses.”

SECTION 4. Compliance with California Environmental Quality Act (CEQA). Based
on the entire record before the City Council, and all written and oral evidence presented to the
City Council, the City Council hereby finds that this ordinance is exempt from the requirements
of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines since it establishes procedural

1 requirements for the establishment of amortization periods and does not result in changes to the
2 environment.

3 **SECTION 5. Severability.** If any section, subsection, subdivision, sentence, clause,
4 phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the
5 decision of any court of competent jurisdiction, such decision shall not affect the validity of the
6 remaining portions of this Ordinance. The City Council hereby declares that it would have
7 adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or
8 portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions,
9 sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

10 **SECTION 6. Effective Date.** This ordinance shall become effective thirty (30) days after
11 its adoption.

12 **SECTION 7. Publication.** The City Clerk shall certify the passage of this Ordinance and
13 shall cause the same to be entered in the book of original ordinances of said City; shall make a
14 minute passage and adoption thereof in the records of the meeting at which time the same is
15 passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof,
16 cause the same to be published as required by law, in a local newspaper of general circulation and
17 which is hereby designated for that purpose.

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19 **PASSED, APPROVED AND ADOPTED** this ___ day of _____, 2025.

20 _____
21 Frank Navarro, Mayor

22 ATTEST:

23 _____
24 Isaac Suchil, City Clerk

25 APPROVED AS TO FORM:

26 _____
27 Best Best & Krieger LLP
28 City Attorney