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ORDINANCE NO. O-04-09

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLTON,
CALIFORNIA TO AMEND TITLE 8 OF THE COLTON MUNICIPAL CODE BY
ADDING CHAPTER 8.05 TO REQUIRE REGISTRATION, MAINTENANCE, AND
SECURITY OF ABANDONED AND DISTRESSED PROPERTIES**

WHEREAS, on May 19, 2009, the City Council held a duly noticed public hearing at which all persons wishing to testify in connection with the Abandoned and Distressed Property Ordinance were heard and the Abandoned and Distressed Property Ordinance was comprehensively reviewed; and

WHEREAS, the City Council finds that the growing presence of vacant, abandoned properties can discourage potential buyers from purchasing a property adjacent to or in neighborhoods with vacant, abandoned properties; and

WHEREAS, the City Council finds that the increased number of these vacant and abandoned properties can lead to neighborhood decline and become attractive nuisances causing the City to incur significant costs in the form of City staff time for code enforcement actions seeking to maintain the condition of these properties; and

WHEREAS, the City Council finds the many vacant, abandoned properties are the responsibility of out of area or out of state lenders and trustees; and

WHEREAS, in many instances these lenders and trustees fail to adequately maintain and secure these vacant properties; and

WHEREAS, the City has an obligation to protect its neighborhoods from decline and devaluation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON DOES ORDAIN AS FOLLOWS:

SECTION 1. By the passage of this Ordinance, the City Council hereby adds Chapter 8.05 to Title 8 of Colton Municipal Code, as follows:

**“Chapter 8.05.
Abandoned and Distressed Property.**

- Sec. 8.05.010. Purpose.**
- Sec. 8.05.020. Definitions.**
- Sec. 8.05.030. Recordation of Transfer of Loan/Deed of Trust/Assignment of Rents.**
- Sec. 8.05.040. Registration Requirements.**
- Sec. 8.05.050. Management and Maintenance Requirements.**
- Sec. 8.05.060. Security Requirements.**
- Sec. 8.05.070. Enforcement.**
- Sec 8.05.080. Violations.**
- Sec. 8.05.090. Penalties.**
- Sec. 8.05.100. Additional Authority.**
- Sec. 8.05.110. Fees.**

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8.05.010. Purpose.

The purpose of this Municipal Code Chapter is to establish uniform and reasonable regulations to prevent the detrimental effects associated with abandoned and distressed properties. To that end, this section establishes an abandoned and distressed property registration program that requires adequate maintenance and security of abandoned properties.

8.05.020. Definitions.

For the purposes of this Chapter, the following terms shall have the meanings provided in this section

“Abandoned Property” means a real property that is vacant and either: (a) the subject of a current Notice of Default and/or Notice of Trustee’s Sale; (b) the subject of a pending Tax Assessors Lien Sale; (c) the subject of a foreclosure sale where the title was retained by or transferred to the beneficiary of a Deed of Trust involved in the foreclosure; (d) has been transferred under a Deed in Lieu of Foreclosure/Sale; or (e) the property has been surrendered or deserted in contemplation or threat of foreclosure.

“Accessible property” means any real property, structure or building on property that is freely accessible, including any property that is accessible through a compromised or breached gate, fence, wall, window, door, or similar structure and/or is unsecured in a way as to allow access to the interior space by unauthorized persons.

“Agreement for Sale” means any agreement or written instrument which provides that title to real property shall be transferred or conveyed from one Person to another Person.

“Assignment of Rents” means a written instrument which transfers the beneficial interest under a Deed of Trust from one Person to another Person.

“Beneficiary” means the beneficiary (either the original beneficiary or the assignee) under a note secured by a Deed of Trust.

“Buyer” means any person who agrees to transfer anything of value in consideration for property described in an Agreement for Sale.

“Dangerous Building” means any building or structure that is in violation of any condition referenced in the Uniform Code for Abatement of Dangerous Buildings, as adopted by Section 15.04.010 of the Colton Municipal Code.

“Day” means a calendar day.

“Deed of Trust” means any instrument, including any Deed of Trust or mortgage, by which legal title to real property, or any interest therein, is transferred to a trustee as security for a real estate loan, including, without limitation, any and all subsequent Deeds of Trust, i.e.: Second Deed of Trust, Third Deed of Trust, etc.

“Deed in Lieu of Foreclosure/Sale” means a document that transfers legal title to a property from the Trustor to the Trustee, upon consent of the Beneficiary of the Deed of Trust.

1 “Default” means the failure to fulfill a contractual obligation, whether monetary or
2 otherwise.

3 “Distressed Property” means real property that is under a current Notice of Default or Notice
4 of Trustee’s Sale, or pending Tax Assessor’s Lien Sale or has been foreclosed upon by the Trustee or
5 has been conveyed to the Beneficiary or Trustee by way of a Deed in Lieu of Foreclosure, but which
6 is lawfully occupied.

7 “Evidence of Vacancy” means any condition that, on its own or combined with other
8 conditions present, would lead a reasonable person to believe that the property is vacant. Such
9 conditions include, but are not limited to, overgrown, dead, or dying vegetation, dry brush,
10 accumulation of newspapers, circulars, flyers, or mail, past due utility notices or disconnected
11 utilities, accumulation of trash, junk or debris, broken windows, doors or other means of entry, the
12 absence of window coverings such as curtains, blinds or shutters, the absence of furnishings or
13 personal items consistent with occupancy, statements by neighbors, passersby, delivery agents,
14 government employees that the property is vacant.

15 “Foreclosure” means the process by which a property, placed as security for a loan, is sold
16 to satisfy the debt if the Trustor defaults.

17 “Local” means the area within forty (40) miles of the subject property.

18 “Neighborhood Standard” means those conditions that are present on a simple majority of
19 other properties within a three hundred (300) foot radius of the subject property. A property that is
20 the subject of a Neighborhood Standard comparison, or any other Abandoned or Distressed Property
21 within the three hundred (300) foot radius, shall not be counted toward the simple majority.

22 “Notice of Default” or “Notice of Trustee’s Sale” means a notice that a Default has occurred
23 under a Deed of Trust and that the Beneficiary intends to proceed with a trustee’s sale or other
24 similar remedies authorized by law.

25 “Out of area” means the area in excess of forty (40) miles from the subject property.

26 “Owner” means any Person having a legal title in any real property.

27 “Owner of record” means the Person having recorded title to the property as shown in the
28 San Bernardino County Recorder’s Office.

 “Person” shall have the meaning set forth in Section 1.04.010 of the Colton Municipal Code.

 “Property” means any unimproved or improved real property, or portion thereof, situated in
the incorporated territory of the City of Colton, designed and permitted to be used for dwelling or
commercial purposes and includes the buildings or structures located on the property.

 “Responsible Party” means the Person having actual control of the property at any given
time, including the Owner of Record, Beneficiary, Trustee, servicing company, or real estate agent
acting, or any other party acting on behalf of the Owner of Record, Beneficiary, or Trustee.

 “Secured” or “Securing” or any of its variants means such measures as may be directed by
the Colton Police Department Code Enforcement Division that assist in rendering the property
inaccessible to unauthorized persons, including, but not limited to, the repairing of fences and walls,

1 chaining or pad-locking of gates, and the repair or boarding of door, window or other openings to a
2 minimum of the current HUD securing standards at the time the boarding is completed or required.

3 “Trustee” means the Person holding a Deed of Trust on a property.

4 “Trutor” means a borrower under a Deed of Trust, who deeds the legal title to a property
5 over to a Trustee as security for the payment of a debt.

6 “Vacant” means a building or structure that is not legally occupied.

7 **8.05.030. Recordation of Transfer of Loan/Deed of Trust/Assignment of Rents.**

8 Within ten (10) days following the purchase or transfer of a loan or any Deed of Trust
9 secured by Abandoned or Distressed Property, the new Beneficiary and Trustee shall both record,
10 with the San Bernardino County Recorder’s Office, an Assignment of Rents that lists the names of
11 the Beneficiary and Trustee, and the mailing address and contact phone number of the new
12 Beneficiary and Trustee responsible for receiving payments associated with the Deed of Trust.

13 **8.05.040. Registration Requirements.**

14 (a) Any Beneficiary and Trustee under a Deed of Trust, or their designee, on
15 Abandoned Property located within the City of Colton shall perform an inspection of the property
16 that is the security for the Deed of Trust, upon Default by the Trutor, prior to recording a Notice of
17 Default with the San Bernardino County Recorder’s Office. If the property is found to be Vacant or
18 shows Evidence of Vacancy, the Beneficiary and Trustee shall, within ten (10) days following the
19 inspection, register the property with Colton Police Department Code Enforcement Division on
20 forms provided by the City.

21 (b) Any Distressed Property shall be inspected by the Beneficiary and Trustee, or their
22 designee, at least monthly until either: 1) the Trutor or other party remedies the Default, or 2) it is
23 found to be Vacant or shows Evidence of Vacancy, at which time it is deemed Abandoned, and the
24 Trustee shall, within ten (10) days following the required inspection, register the property with the
25 Colton Police Department Code Enforcement Division on forms provided by the City.

26 (c) The registration shall contain the names of the Beneficiary and Trustee, the street
27 address of the Beneficiary and Trustee (no P. O. Boxes), a direct contact name, facsimile and phone
28 numbers for the Beneficiary and Trustee and, in the case of an Out of Area Beneficiary or Trustee,
the Local property management company responsible for the security, maintenance and marketing of
the subject property.

(d) At the time of registration, the Beneficiary and Trustee shall concurrently file a
Statement of Intent which will include: 1) the expected period of vacancy; 2) a plan for regular
maintenance during the period of vacancy; and 3) a timeline for the lawful occupancy, rehabilitation
or demolition of the subject property.

(e) An annual registration fee for the Beneficiary and Trustee shall accompany the
registration form. Registration fees will not be prorated. The fee and registration shall be valid for
the calendar year, or remaining portion of the calendar year, in which the registration was initially
required. Subsequent registrations and fees are due January 1 of each year and must be received by
the Colton Police Department Code Enforcement Division no later than January 31 of the year due.
The amount of the registration fee shall be set by resolution of the City Council.

1 (f) Anytime after the property is determined to be Vacant and if there are any changes
2 to ownership, whether recorded or not, or if the loan is transferred to another Beneficiary, Trustee or
3 Owner ("Responsible Party"), the Responsible Party shall re-register the property with the City. The
4 re-registration must occur within ten (10) days of the change. A re-registration fee will be assessed.
5 The amount of the re-registration fee shall be set by resolution of the City Council.

6 (g) Properties shall remain under the annual registration requirement and the security
7 and maintenance standards of this section as long as they remain Abandoned or Distressed.

8 (h) Any person that has registered a property under this Chapter must report in writing
9 any change of information contained in the registration within ten (10) days following the change.

10 **8.05.050. Management and Maintenance Requirements.**

11 (a) The Beneficiary and Trustee of the subject property shall obtain a Local property
12 management company to inspect the property on a weekly basis to monitor the property for
13 compliance with this Chapter.

14 (b) Abandoned or Distressed properties shall be, in comparison to the Neighborhood
15 Standard, kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building materials, any
16 accumulation of newspapers, circulars, flyers, notices (except those required by federal, state or local
17 law), discarded personal items, including, but not limited to, furniture, clothing, large and small
18 appliances, printed material or any other items that give the appearance that the property is
19 Abandoned or Distressed.

20 (c) The Abandoned or Distressed Property shall be maintained free of graffiti, tagging
21 or similar markings by removal or painting over with an exterior grade paint that matches the color
22 of the exterior of the structure.

23 (d) Visible front and side yards shall be landscaped and maintained to the Neighborhood
24 Standard existing at the time registration was required.

25 (1) Required landscaping includes, but is not limited to, grass, ground covers,
26 bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf or sod.

27 (2) Required landscaping does not include weeds, gravel, broken concrete,
28 asphalt, decomposed granite, plastic sheeting, mulch, indoor-outdoor carpet or any similar material.

(3) Required maintenance includes, but is not limited to regular watering,
irrigation, cutting, pruning and mowing of required landscape and removal of all trimmings.

(e) Pools and spas shall be kept in working order so the water remains clear and free of
pollutants and debris to prevent pools and spas from becoming a breeding ground for mosquitoes and
other vectors, or drained and kept dry. In either case properties with pools or spas must comply with
the minimum security fencing requirements of the State of California.

(f) Adherence to this section does not relieve the Beneficiary, Trustee and Owner of
any obligations set forth in any other Code or law, Covenants Conditions and Restrictions, or any
Home Owners Association rules and regulations that may apply to the property.

8.05.060. Security Requirements.

1 (a) Abandoned Properties shall be maintained in a secure manner so as not to be
2 accessible to unauthorized persons. Secure manner includes, but is not limited to, the closure and
3 locking of windows, doors (walk-through, sliding and garage) gates and any other opening of such
4 size that it may allow a child to access the interior of the property and or structure(s). In the case of
5 broken windows, securing means the re-glazing or boarding of the window. Any boards used must
6 be painted to match the existing color of the building.

7 (b) If any Abandoned Property is owned by a corporation or Out of Area Beneficiary,
8 Trustee or Owner, a Local property management company shall be contracted to perform weekly
9 inspections to verify that the requirements of this Chapter, and any other applicable laws, are being
10 met.

11 (c) The Abandoned Property shall be posted with the name and a 24-hour contact phone
12 number of the Local property management company. The posting shall be no less than 18" x 24" and
13 shall be of a font that is legible from a distance of forty-five (45) feet and shall contain along with
14 the name and 24-hour contact number, the words "THIS PROPERTY MANAGED BY" and "TO
15 REPORT PROBLEMS OR CONCERNS CALL". The posting shall be placed on the interior of a
16 window facing the street to the front of the property so it is visible from the street, or secured to the
17 exterior of the building or structure facing the street to the front of the property so it is visible from
18 the street, or if no such area exists, on a stake of sufficient size to support the posting in a location
19 that is visual from the street to the front of the property but not readily accessible to vandals. Exterior
20 posting must be constructed of, and printed with, weather resistant materials.

21 **8.05.070. Enforcement.**

22 The Colton Police Department Code Enforcement Division shall have primary responsibility
23 for enforcing this Chapter.

24 **8.05.080. Violations.**

25 Violations shall be prosecuted according to Colton Municipal Code Section 8.02.020. Each
26 day a violation is committed or permitted to continue shall constitute a separate offense and shall be
27 punishable as such. Violations of this chapter shall be treated as a strict liability offense regardless
28 of intent. Nothing in this Chapter, or any other Chapter of the Colton Municipal Code shall prevent
the City of Colton from engaging in efforts to obtain voluntary compliance by means of warnings,
notices, or educational efforts.

8.05.090. Penalties.

Every violation of a provision of this Chapter shall be subject to an administrative fine and penalty in
accordance with Colton Municipal Code Section 8.12.010.

If the violation is not corrected, additional administrative citations may be issued for the same
violation. The amount of administrative penalty shall increase at the rate specified above. Penalties shall not
exceed \$1,000.00 for each day, or portion thereof, that the violation continues to exist. The administrative and
civil penalties shall be payable to the City of Colton. Payment of penalties shall not excuse the failure to
correct the violation, or bar further enforcement action.

8.05.100. Additional Authority.

In addition to the enforcement remedies established in this Chapter, the Code Enforcement
Director shall have the authority to require the Beneficiary, Trustee or Owner, or any combination
thereof, to implement additional maintenance and security measures, including but not limited to,

1 securing any and all door, window or other openings, installing additional security lighting,
2 increasing on-site inspection frequency, employment of an on-site security guard, or other measures
3 as may be reasonably required to arrest the decline of the Abandoned or Distressed property.

4 **8.05.110. Fees.**

5 The fee for registering or re-registering a property subject to this Chapter shall be set from
6 time to time by resolution of the City Council.

7 **SECTION 2.** If any section, subsection, paragraph, sentence, clause, phrase or portion of
8 this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of
9 competent jurisdiction, such decision shall not affect the validity of the remaining portions of this
10 Ordinance.

11 **SECTION 3.** This ordinance shall take effect thirty (30) days after its enactment in
12 accordance with the provisions of California Law.

13 **SECTION 4.** The City Council hereby finds that this Ordinance is categorically exempt
14 from further environmental review pursuant to the California Environmental Quality Act (Pub.
15 Resources Code, §§ 21000 et seq.) ("CEQA") because, pursuant to Section 15321(a), Class 21,
16 Category (a) of the State CEQA Guidelines, the Ordinance constitutes the enforcement of a law
17 administered or adopted by the City as a regulatory agency. Therefore, City staff is hereby directed
18 to file a Notice of Exemption with the County Clerk within three (3) days following the adoption of
19 this Ordinance.

20 **SECTION 5.** The City Clerk shall certify to the passage of the Ordinance and cause the
21 same or a summary thereof to be published within fifteen (15) days after adoption in a newspaper of
22 general circulation printed and published and circulated in the City of Colton, California.

23 PASSED, APPROVED AND ADOPTED this 2nd day of June, 2009.

24 
25 KELLY J. CHASTAIN
26 Mayor

27 ATTEST:

28 
EILEEN C. GOMEZ
City Clerk

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF COLTON)

4
5 I, EILEEN C. GOMEZ, City Clerk of the City of Colton, California, do hereby
6 certify under penalty of perjury that the foregoing is a full, true and correct copy of
7 Ordinance No. O-04-09, and was duly passed, approved, and adopted by the City
8 Council of the City of Colton at its Regular Meeting held on the 2nd day of June, 2009,
9 by the following vote to wit:

10	AYES:	COUNCILMEMBER	Toro, DeLaRosa, Yzaguirre, Oliva, 11 Perez, Bennett and Mayor Chastain
12	NOES:	COUNCILMEMBER	None
13	ABSTAIN:	COUNCILMEMBER	None
14	ABSENT:	COUNCILMEMBER	None

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17 Dated: _____

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20 _____
21 EILEEN C. GOMEZ
22 City Clerk
23 City of Colton, California

24 (SEAL)
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