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Eddie Arredondo
Burnet County Attorney

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March 20, 2020

The Honorable Ken Paxton
Attorney General of the State of Texas
ATTN: Opinion Committee
P O Box 12548
Austin, Texas 78711-2548

Re: Authority of a City to enforce Private Restrictive Covenants

Dear Attorney General Paxton:

A person other than an authorized requestor who would like to request an Attorney General opinion may ask an authorized requestor to submit the question to the Attorney General. My office has been contacted by the City of Horseshoe Bay, Texas which partially lies within the confines of Burnet County. Pursuant to the authority to issue advisory opinions granted to the Attorney General in Section 402.041, *et seq.* of the Texas Government Code, this letter is being submitted to request an opinion regarding certain provisions of the Texas Government Code.

The City of Horseshoe Bay, Texas, a Texas Home Rule municipality (the "City"), has zoning ordinances that provide regulations for exterior materials required for new residential and commercial buildings. This past legislative session, the Legislature adopted HB 2439 (Government Code Title 10, Subtitle Z, Chapter 3000, Section 3000.001, *et seq.*) which prohibits the City from adopting or enforcing a rule, charter provision, order, building code or other regulation that prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. Due to this new statute, the City has reformed its ordinances to be in compliance with the statute.

Numerous subdivisions exist in the City that have restrictive covenants that require construction plans (including elevations, landscaping and exterior materials) to be approved by an architectural control committee ("ACC"). Since Section 3000.001, *et seq.* applies only to governmental entities, the various ACCs are entitled to enforce their restrictive covenants that address and regulate exterior building materials.

The City wishes to enact an ordinance that would provide the following:

"Building Permit Application Requirements: An applicant seeking a building permit for a project located on property subject to restrictive covenants that require architectural control committee approval, may only submit plans to the City that have been submitted to and approved by the applicable architectural control committee stating that the plans comply with the restrictive covenants for the subdivision where the property is located."

Question 1: If the City adopts the above-proposed ordinance, will it directly or indirectly violate Section 3000.001, *et seq.*?

The City has a population of approximately 5,525 and the City has adopted zoning ordinances.

Question 2: Can the City enforce private restrictive covenants under Local Government Code 212.151 if (i) the City does not have a population of 1.5 million, and (ii) the City does have zoning ordinances?

We request that your office review the statutes and provide an opinion or an interpretation of the questions presented.

Respectfully Submitted,



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