



RECEIVED

By Opinion Committee at 1:33 pm, Nov 13, 2020

CAMERON COUNTY DISTRICT ATTORNEY

Luis V. Saenz

District Attorney

RQ-0387-KP

FILE# ML-48902-20

I.D.# 48902

November 13, 2020

Via U.S. Mail & Electronic Mail

Office of the Attorney General
The Honorable Ken Paxton
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
E: opinion.committee@oag.texas.gov

RE: *Request for Attorney General's Opinion regarding applicability of Chapter 3000 of the Texas Government Code.*

Dear Attorney General Paxton:

I write to request an opinion on behalf of Mayor Patrick McNulty of the City of South Padre Island. The issue relates to the application of Texas Government Code ch. 3000 and the implications it may have on the operation of locally adopted municipal ordinances.

QUESTIONS:

1. Do Texas Government Code Sections 3000.02(a)(1) and (2) prohibit a political subdivision from adopting and enforcing rules, regulations, and code provisions that require certain and specific paint color palettes and paint color patterns in particular areas under the jurisdiction of the subdivision?
2. Do Texas Government Code Sections 3000.02(a)(1) and (2) establish a more stringent aesthetic method in construction, renovation, maintenance, or other alteration of a building as

Cameron County Administration Building

964 E. Harrison Street ♦ Fourth Floor ♦ Brownsville, Texas 78520

Mainline: 956.544.0849 Fax: 956.544.0869

compared to the national model codes—which are silent as to paint color palettes and paint color patterns—rendering the Sections unenforceable?

BACKGROUND:

In 2019 the Texas Legislature passed, and the Governor approved, House Bill 2439 which codified chapter 3000 of the Texas Government Code. As I understand it, Chapter 3000 creates limitations on a government entity's¹ ability to regulate certain construction and renovation projects. According to this provision,

Notwithstanding any other law and except as provided by Subsection (d), a governmental entity may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that:

- (1) 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 code² published within

¹ Under the Texas Government Code, a “government entity” is defined as a “board, commission, council, department, or other agency in the executive branch of state government that is created by constitution or statute... or a political subdivision of this state.” Tex. Gov’t Code §§ 3000.001 & 2007.002 (West 2020).

² “National model code” is defined as “a publication that is developed, promulgated, and periodically updated at a national level by organizations consisting of industry and government fire and building safety officials through a legislative or consensus process and that is intended for consideration by units of government as local law. National model codes include the International Residential Code, the National Electrical Code, and the International Building Code.” Tex. Gov’t Code §3000.001 & Tex. Loc. Gov’t Code §214.217(a)(West 2020).

the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or

- (2) establishes a standard for a building product, material, or *aesthetic method in construction, renovation, maintenance*, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building.

Tex. Gov't Code Ann. § 3000.002(a)(West 2020)(emphasis added). “A rule, charter provision, ordinance, order, building code, or other regulation adopted by a governmental entity that conflicts with this section is void.” Tex. Gov't Code § 3000.002(e)(West 2020).

The City of South Padre Island has adopted a number of national model codes during the last three code cycles, including, but not limited to, the *International Building Code* and the *International Residential Code*.³ The model codes as adopted by the City of South Padre Island are silent as to the regulation of paint color palettes or patterns. The City of South Padre Island has enacted provisions of the City Form Base Code which mandates, in certain areas of the city, specific paint color palettes and patterns, and prohibits any deviation from the

³ Applicable codes may be accessed via the following links:

- 2015 International Building Code: <https://codes.iccsafe.org/content/IBC2015>
- 2015 International Residential Code: <https://codes.iccsafe.org/content/IRC2015>
- Other related codes: <https://codes.iccsafe.org/codes/i-codes>.

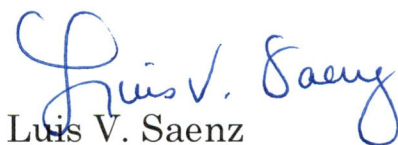
prescribed paint color standards. See Attachment A: Appendix B: *Munsell color system*. The City of South Padre Island would like to enforce these City Form Base Code restrictions.

DISCUSSION:

The issue presented by the City of South Padre Island turns on whether these paint color and pattern regulations are valid restrictions on a municipality's regulation of the use or installation of a building product (§ 3000.02(a)(1)) or material and aesthetic method in construction, renovation, maintenance, or other alteration (§ 3000.02(a)(2)). Chapter 3000 neither includes definitions for "building product or material" or "aesthetic method." A plain reading of the statute suggests Chapter 3000 does not apply to restrictions on paint color or patterns. Instead, Chapter 3000 seems to curtail a municipality's ability to restrict building processes and materials. Under this interpretation, regulations such as "all buildings on Main Street shall have brick facades" or a requirement that "only Sherman Williams products shall be used" would appear to violate the statute, while specific color or pattern regulations would not. Nevertheless, clarity on these issues is welcome.

Your attention to this matter and response is greatly appreciated as it is very important to the City of South Padre Island.

Respectfully,



Luis V. Saenz

DISTRICT ATTORNEY