

**NOTICE OF DEVELOPMENT STANDARDS REVIEW TASK FORCE SPECIAL MEETING
CITY OF SOUTH PADRE ISLAND**

TUESDAY, MAY 18, 2021
11:00 AM AT THE MUNICIPAL BUILDING,
CITY COUNCIL CHAMBERS, 2ND FLOOR
4601 PADRE BOULEVARD, SOUTH PADRE ISLAND, TEXAS

1. Call to Order
2. Pledge of Allegiance
3. Election of Chairman and Vice-Chairman

4. Public Comments and Announcements

This is an opportunity for citizens to speak to the Task Force relating to agenda or non-agenda items. Speakers are required to address the Task Force at the podium and give their name before addressing their concerns. [Note: State law will not permit the Task Force to discuss, debate or consider items that are not on the agenda. Citizen comments may be referred to City Staff or may be placed on the agenda of a future Development Standards Review Task Force meeting]

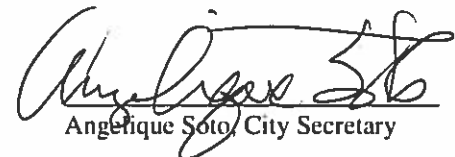
5. Regular Agenda

- 5.1. Approve Minutes of April 13, 2021 Regular Meeting.
- 5.2. Discussion and action regarding a variance request by Menny Amoyal from Chapter 15 Signs Sec. 15-2.1 Rules and procedures governing art in public spaces of the City's Code of Ordinances. Applicant is requesting to install a whale sculpture/building inside a private courtyard located at 1601 Padre Boulevard.
- 5.3. Report from the City Attorney regarding AG opinion KP-0370 related to the Government Code Sec 3000.002 and the FBC required paint patterns.

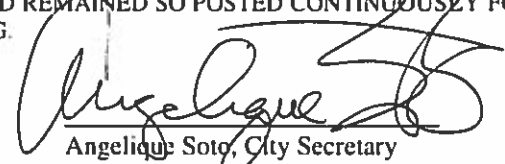
6. Adjourn

NOTE: One or more members of the City of South Padre Island City Council may attend this meeting; if so, this statement satisfies the requirements of the OPEN MEETINGS ACT.

DATED THIS THE 14TH DAY OF MAY 2021


Angelique Soto, City Secretary

I, THE UNDERSIGNED AUTHORITY, DO HEREBY CERTIFY THAT THE ABOVE NOTICE OF MEETING OF THE DEVELOPMENT STANDARDS REVIEW TASK FORCE OF THE CITY OF SOUTH PADRE ISLAND, TEXAS IS A TRUE AND CORRECT COPY OF SAID NOTICE AND THAT I POSTED A TRUE AND CORRECT COPY OF SAID NOTICE ON THE BULLETIN BOARD AT CITY HALL/MUNICIPAL BUILDING ON MAY 14, 2021. AT/OR BEFORE 5:00 PM AND REMAINED SO POSTED CONTINUOUSLY FOR AT LEAST 72 HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING.


Angelique Soto, City Secretary

THIS FACILITY IS WHEELCHAIR ACCESSIBLE, AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR ACCOMMODATIONS OR INTERPRETIVE SERVICES MUST BE MADE 48 HOURS PRIOR TO THIS MEETING. PLEASE CONTACT BUILDING OFFICIAL, GEORGE MARTINEZ AT (956)761-8103.

Agenda: MAY 18, 2021



**CITY OF SOUTH PADRE ISLAND
DEVELOPMENT STANDARDS REVIEW TASK FORCE
AGENDA REQUEST FORM**

MEETING DATE: May 18, 2021

NAME & TITLE: Marta Martinez

DEPARTMENT: Planning/Parks & Rec. Department

ITEM

Approve Minutes of April 13, 2021 Regular Meeting.

ITEM BACKGROUND

Approve April 13, 2021 Minutes

BUDGET/FINANCIAL SUMMARY

N/A

COMPREHENSIVE PLAN GOAL

N/A

LEGAL REVIEW

Sent to Legal: No

Approved by Legal: No

RECOMMENDATIONS/COMMENTS:

<p style="text-align: center;">REGULAR MEETING MINUTES CITY OF SOUTH PADRE ISLAND DEVELOPMENT STANDARDS REVIEW TASK FORCE</p>
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TUESDAY, APRIL 13, 2021

1. CALL TO ORDER

The Development Standards Review Task Force Members of the City of South Padre Island, Texas held a Regular Meeting on Tuesday, April 13, 2021 at the Municipal Complex Building, 2nd Floor, 4601 Padre Boulevard, South Padre Island, Texas. Vice Chairman Gabriel Vanounou called the meeting to order at 10:00 a.m. A quorum was present: Task Force Member Charles Fox, Gary Johnson, Brian Kohl, and Cindi Love.

City staff members present were: City Manager Randy Smith, Public Works Director Alex Sanchez, and Planning Coordinator Marta Martinez. Also present was Council Member Ken Medders.

2. PLEDGE OF

Vice Chairman Vanounou led the Pledge of Allegiance.

3. PUBLIC COMMENTS AND ANNOUNCEMENTS.

Vice Chairman Vanounou welcomed Brian Kohl and Cindi Love to the Development Standards Review Task Force.

4. REGULAR AGENDA

4.1 APPROVE MINUTES OF NOVEMBER 10, 2020 REGULAR MEETING.

Task Force Member Fox made a motion, seconded by Task Force Member Johnson to approve the minutes as submitted. Motion carried unanimously.

4.2 DISCUSSION AND ACTION FOR A REQUEST BY FRANKE INVESTMENT FOR A VARIANCE FROM CHAPTER 15 SIGNS, TABLE 15-1, COMMERCIAL SIGNS FOR MULTI-TENANT CENTERS & OFFICE COMPLEXES OF THE CITY'S CODE OF ORDINANCES. APPLICANT IS REQUESTING TO INSTALL A MONUMENT SIGN THAT EXCEEDS THE MAXIMUM REQUIREMENT PER FACE IS 72SQ FT. AND SKIRTING WIDTH SHALL NOT EXCEED 4FT.

Public Works Director Alex Sanchez gave a brief presentation regarding the installation of a new monument sign that exceeds the maximum square footage and the skirting that exceed the maximum width. The Task Force Members then expressed their concerns regarding the new monument sign. After some discussion Vice Chairman Vanounou made a motion, seconded by Task Force Member Johnson to approve the installation of a eighty (80) square foot new monument sign. The motion passed with a 3:2 vote. Task Force Member Fox and Task Force Member Johnson voted against the variance.

Task Force Member Fox made motion, seconded by Task Force Member Jonson to approve a six (6) feet in width skirting. Motion carried unanimously.

5. ADJOURN.

There being no further business, Vice Chairman Vanounou adjourned the meeting at 10:24 a.m.

Marta Martinez, Planning Coordinator

Gabriel Vanounou, Vice Chairman

**CITY OF SOUTH PADRE ISLAND
DEVELOPMENT STANDARDS REVIEW TASK FORCE
AGENDA REQUEST FORM**

MEETING DATE: May 18, 2021

NAME & TITLE: Alex Sanchez, Public Works Director

DEPARTMENT: Planning/Parks & Rec. Department

ITEM

Discussion and action regarding a variance request by Menny Amoyal from Chapter 15 Signs Sec. 15-2.1 Rules and procedures governing art in public spaces of the City's Code of Ordinances. Applicant is requesting to install a whale sculpture/building inside a private courtyard located at 1601 Padre Boulevard.

ITEM BACKGROUND

Based on the description from the owner the sculpture is a building which will include a coffee shop, an ice cream shop, an arcade and a store. Staff recommends that this is a building and not a sculptor.

BUDGET/FINANCIAL SUMMARY

N/A

COMPREHENSIVE PLAN GOAL

N/A

LEGAL REVIEW

Sent to Legal: No

Approved by Legal: No

RECOMMENDATIONS/COMMENTS:



CITY OF SOUTH PADRE ISLAND

Development Standards Review Task Force Application

Meeting date on the 2nd Tuesday of every month.

To be considered a complete application this form must be COMPLETELY filled out and ten (10) copies of the form and supporting documentation must be submitted two (2) weeks before the meeting date. \$250 application fee per variance request.

SITE LOCATION FOR REQUEST:

Physical Address (Street Name & Number): 1601 padre blvd south padre island Tx 78597

Legal Description (Lot/Block/Subdivision): Lots 1,2,3,4,5,6,32 and 34 block 7

Is this property part of a shopping center (i.e. one tenant of many?) [] YES / [] NO

Linear footage of any walls facing a street: 12'

I hereby request the following from the Development Standards Review Task Force: _____

Attached letter


***SIGNS & STRUCTURES:** person pulling sign permit is required to have a \$10,000 license and permit bond made out to the City of South Padre Island.

PROPERTY OWNER: Menalon inc

OWNER MAILING ADDRESS: 3300 padre blvd

CITY, STATE, ZIP: South padre island Tx

PHONE NUMBER: (956)455-4917 (E-mail address) Blueskyspi@gmail.com


Signature of Property Owner (required) 4/20/2021
Date

APPLICANT: Menny

APPLICANT MAILING ADDRESS: _____

CITY, STATE, ZIP: 3300 padre blvd

PHONE NUMBER: (956)455-4917 (E-mail address) Blueskyspi@gmail.co

Signature of Applicant (if different from owner) _____
Date

"JONAH AND THE WHALE" ENTERTAINMENT CENTER PROPOSED PROJECT

WE'RE ASKING TO APPROVE A WHALE SCULPTURE INSIDE OUR PRIVATE COURTYARD, ABOUT 12 LINEAR FOOTAGE FACING PADRE BLVD. THE SCULPTURE WILL NOT BE SEEN WHEN DRIVING FROM THE NORTH SIDE OF PADRE BLVD, IT WILL BE SEEN ONLY WHEN COMING FROM THE SOUTH SIDE OF PADRE BLVD. ACROSS THE ROAD.

"JONAH AND THE WHALE" CONCEPT, IS NOT JUST A SCULPTURE, IT IS ALSO AN EDUCATIONAL FAMOUS BIBLE STORY THAT WE INTEND TO DETAIL WITHIN THE INSIDE WHALE AND BUILDING, INCLUDING DRAWINGS, PICTURES AND EXPLANATIONS, SO IT WOULD LOOK LIKE A MUSEUM.

THE COMPLEX WILL INCLUDE A COFFEE SHOP, AN ICE CREAM SHOP, AN ARCADE AND A DISNEY STORE TYPE THAT FIT THE CONCEPT.

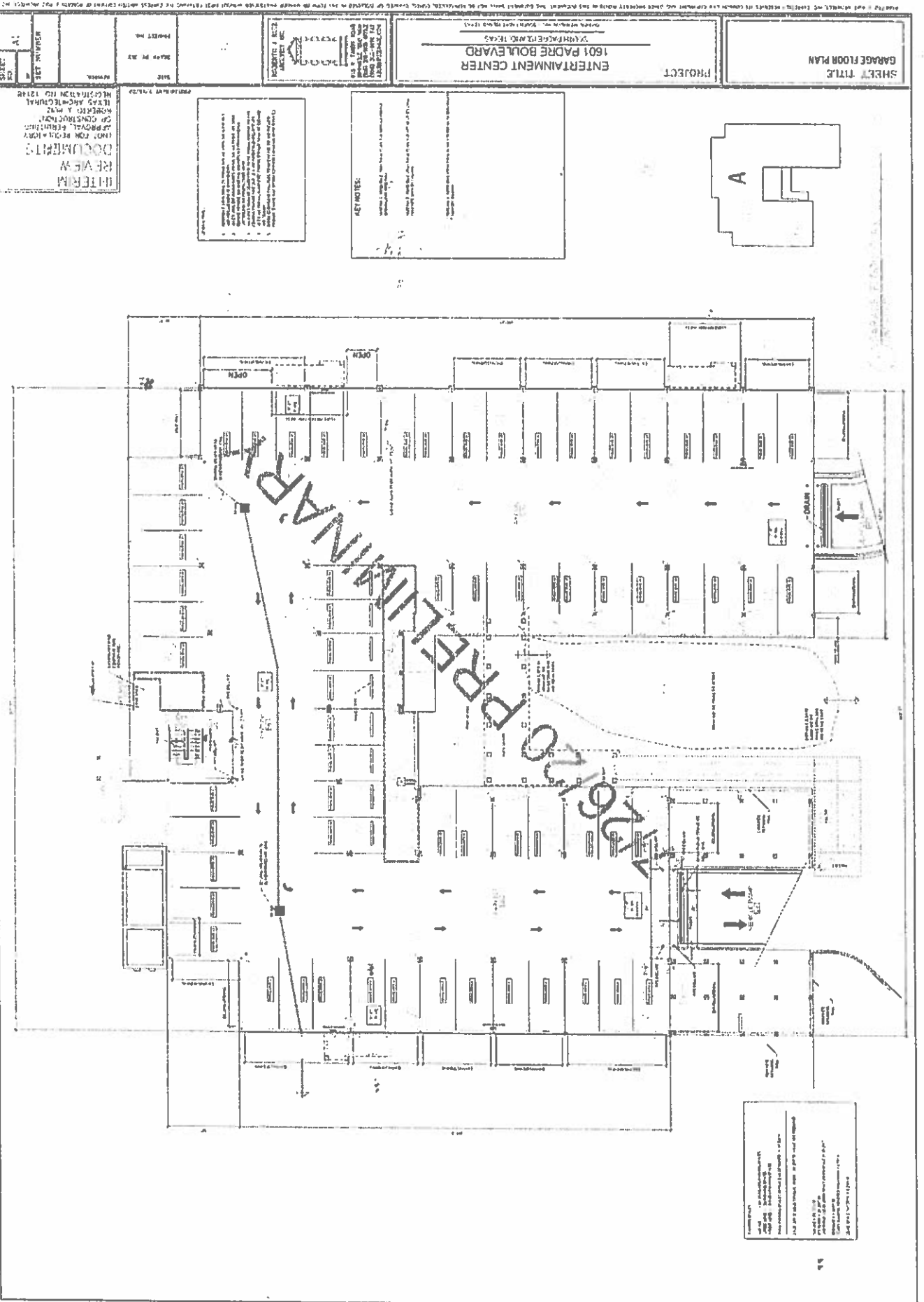
BASED ON ALL THIS THE BANK WAS WILLING TO FINANCE THE PROJECT AND THE ATTRACTION.

IN THE LAST TWO YEARS WE HAVE FACED A LOT OF DIFFICULTIES IN TRYING TO RENOVATE THE BUILDING ESPECIALLY WITH THE COVID-19 SITUATION. WE FINALLY FIND A CONCEPT THAT THE BANK AGREED TO, AND LAST YEAR WE FINALLY REPRESENTED THE PROJECT, INCLUDING THE WHALE SCULPTURE, TO THE CITY COUNCIL. THEIR RESPONSE WAS "GO AHEAD" AND THEY GAVE US THEIR BLESSING. THE PEOPLE WHO SAW THE PLANS, INCLUDING SOME ASSOCIATED WITH THE CITY, WERE VERY ENTHUSIASTS AND REALIZED THAT THIS UNIQUE PROJECT WILL ALSO BENEFIT THE CITY AND THE TOURISTS.

SINCE THEY LIMITED US IN TIME, BELINDA FROM BUILDING DEPARTMENT SUGGESTED THAT WE SUBMIT THE PLANS WITHOUT THE SCULPTURE, SO WE COULD START CONSTRUCTION AS EARLY AS POSSIBLE, AND COMPLETE THE PLANS WITH SCULPTURE LATER.

WE HOPE YOU WILL APPROVE OUR REQUEST SINCE WE SUBMITTED THE PLANS BEFORE YOU CHANGE THE ORDINANCE AND SINCE IT'S NEW CONSTRUCTION AND MAINLY SINCE IT'S INSIDE OUR COURTYARD AND WITHIN THE BUILDING LINE.

THANK YOU



Jonah & the Whale



**CITY OF SOUTH PADRE ISLAND
DEVELOPMENT STANDARDS REVIEW TASK FORCE
AGENDA REQUEST FORM**

MEETING DATE: May 18, 2021

NAME & TITLE: Alex Sanchez, Public Works Director

DEPARTMENT: Planning/Parks & Rec. Department

ITEM

Report from the City Attorney regarding AG opinion KP-0370 related to the Government Code Sec 3000.002 and the FBC required paint patterns.

ITEM BACKGROUND

Report by City Attorney

BUDGET/FINANCIAL SUMMARY

N/A

COMPREHENSIVE PLAN GOAL

N/A

LEGAL REVIEW

Sent to Legal: No

Approved by Legal: No

RECOMMENDATIONS/COMMENTS:



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2021

The Honorable Luis V. Saenz
Cameron County District Attorney
964 East Harrison Street, Fourth Floor
Brownsville, Texas 78520

Opinion No. KP-0370

Re: Whether section 3000.002 of the Government Code prohibits political subdivisions from adopting paint color and pattern requirements (RQ-0387-KP)

Dear Mr. Saenz:

You ask whether section 3000.002 of the Government Code prohibits political subdivisions from adopting paint color and pattern requirements and related questions.¹

Background

Chapter 3000 of the Government Code governs building regulations a governmental entity may adopt with respect to building products, materials, and methods. *See* TEX. GOV'T CODE §§ 3000.001–.005. For purposes of chapter 3000, a governmental entity includes political subdivisions such as a municipality. *Id.* § 3000.001(2) (incorporating section 2007.002 of the Government Code), *id.* § 2007.002(1)(B) (defining governmental entity to include political subdivisions); *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 530 (Tex. 2016) (stating that municipalities are political subdivisions of the State). Subsections 3000.002(a)(1) and (2) limit ordinances and other rules or regulations that a municipality may adopt:

Notwithstanding any other law and [with certain exceptions], 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 code

¹Letter from the Honorable Luis V. Saenz, Cameron Cnty. Dist. Att'y, to the Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Nov. 13, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0387KP.pdf> ("Request Letter").

published within 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 § 3000.002(a)(1), (2). You state that the City of South Padre Island (the "City") adopted a form-based code² that mandates specific color palettes and patterns in certain areas of the City. Request Letter at 3. You ask whether subsections 3000.002(a)(1) and (2) prohibit a municipality from adopting rules, regulations, and ordinances that require specific color palettes and color patterns in particular areas within the municipality's jurisdiction. *Id.* at 1.

Construction of Subsections 3000.002(a)(1) and (2)

Courts construing statutes attempt to give effect to the Legislature's intent, as ascertained from the plain meaning of the words used in the statute. *Brazos Elec. Power Coop., Inc. v. Tex. Comm'n on Env't Quality*, 576 S.W.3d 374, 383–84 (Tex. 2019). When the Legislature has defined a statutory term, that definition controls, but for undefined terms courts "construe the statute's words according to their plain and common meaning." *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625 (Tex. 2008).

Subsection 3000.002(a)(1) prohibits a municipality from adopting a regulation that "prohibits or limits . . . the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building" in certain circumstances. TEX. GOV'T CODE § 3000.002(a)(1). The term "building product or material" is not defined. "Product" simply means "something produced." WEBSTER'S THIRD NEW INT'L DICTIONARY 1810 (2002). "Material" commonly means "the basic matter (as metal, wood, plastic, fiber) from which the whole or the greater part of something physical (as a machine, tool, building, fabric) is made." *Id.* at 1392. The context concerns products and materials that are used "in the construction, renovation, maintenance, or other alteration of a residential or commercial building." TEX. GOV'T CODE § 3000.002(a)(1).

Under subsection 3000.002(a)(1), a municipality may not adopt a regulation prohibiting or limiting the use of those building products or materials that have been "approved for use by a

²See Katherine A. Woodward, *Form over Use: Form-Based Codes and the Challenge of Existing Development*, 88 NOTRE DAME L. REV. 2627, 2642 (2013) (defining "form-based codes" as "[a] method of regulating development to achieve a specific urban form that aims to create a predictable public realm primarily by controlling physical form, with a lesser focus on land use, through city or county regulations" (quotation marks and citation omitted)).

national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building.”³ *Id.* § 3000.002(a)(1). Because the prohibition concerns only a model code that “applies to the construction, renovation, maintenance, or other alteration of the building” under consideration, it concerns model codes that have been adopted by law within the jurisdiction. TEX. GOV’T CODE § 3000.002(a)(1). And the prohibition includes the last three code cycles of the applicable model codes. *Id.* Thus, a municipality may not prohibit or limit the use or installation of those building products and materials that an applicable model code has approved within the last three publication cycles for use in building construction, renovation, maintenance, or other alteration. *Id.*

Subsection 3000.002(a)(2) prohibits a municipality from adopting a “standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building” more stringent than standards contained in applicable national model codes within the last three publication cycles.⁴ *Id.* § 3000.002(a)(2). Like the key words in subsection 3000.002(a)(1), subsection 3000.002(a)(2) does not define “aesthetic method.” *Id.* “Aesthetic” commonly means “relating to the beautiful as distinguished from . . . the useful and utilitarian.” WEBSTER’S THIRD NEW INT’L DICTIONARY 34 (2002). Aesthetics is a concern in the practice of architecture, which includes establishing “form, aesthetics, materials, and construction technology for a building.” TEX. OCC. CODE § 1051.001(7)(A). And “method” commonly means “the procedure or process for attaining an object.” WEBSTER’S THIRD NEW INT’L DICTIONARY 1422 (2002)⁵. Thus, an “aesthetic method” in subsection 3000.002(a)(2) concerns procedures or processes to satisfy considerations of beauty or appearance in building construction, renovation, maintenance, and other alterations. A court could consider a limitation of the paint color palette or pattern that may be used in a particular part of the city to be an aesthetic method standard.

³Section 3000.001 incorporates the definition of “national model code” that appears in subsection 214.217(a) of the Local Government Code:

“[N]ational model code” means 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. LOC. GOV’T CODE § 214.217(a); *see also* TEX. GOV’T CODE § 3000.001(1).

⁴Section 3000.002 does not apply to certain areas of a municipality, such as areas designated historical, cultural, or architectural importance and significance in specified circumstances. *See* TEX. GOV’T CODE § 3000.002(c)(5)–(7).

⁵*See also State v. Terrell*, 588 S.W.2d 784, 788 (Tex. 1979) (“The term ‘method’ is defined as ‘a procedure or process for attaining an object’ and as an ‘orderly arrangement, development or classification.’ . . . The term is synonymous with the words ‘mode,’ ‘plan,’ ‘design,’ or ‘system.’” (citation omitted)).

Application of subsections 3000.002(a)(1) and (2) to Municipal Color Regulations

You state that the City has adopted several national model codes, including the International Building Code, the International Residence Code, and other model codes. Request Letter at 3. The City's Code of Ordinances indicates that it has adopted a number of model codes:

The City adopts the 2015 International Building Code, 2015 International Residential Code without Section R313 (deleted), 2015 International Fire Code without Appendices L and M (deleted), 2015 International Mechanical Code, 2015 International Plumbing Code, 2015 International Fuel Gas Code, 2014 National Electrical Code, 2015 International Energy Conservation Code, 1997 Standard Housing Code, and the 1985 Unsafe Building Abatement Code and all other amendments thereto except as modified by the Code of Ordinances.

S. PADRE ISLAND, TEX., CODE OF ORDINANCES § 4-5(A) (2018).⁶ Thus, subsections 3000.002(a)(1) and (2) require City ordinances to comport with the pertinent approvals and standards contained in these model codes published within the last three code cycles. *See* TEX. GOV'T CODE § 3000.002(a)(1), (2).

You do not identify any provision in these adopted codes relevant to your question. *See* Request Letter at 3. You state that these codes are “silent as to the regulation of color palates and patterns,” but that fact alone does not fully resolve the inquiry. *See id.* at 3. While a local color regulation may not directly prohibit or limit the use or installation of approved materials or products, subsection 3000.002(a)(1) also prohibits indirect prohibitions and limitations having that effect. TEX. GOV'T CODE § 3000.002(a)(1). Determining all potential indirect effects of a color regulation would likely require resolution of the facts concerning particular products or materials. Similarly, whether a particular model code provision establishes a standard for a building product, material, or aesthetic method less stringent than a color regulation would also likely depend on the particular facts. *See id.* § 3000.002(a)(2). While a court could conclude that the model codes' silence allows a governmental entity to regulate in that area without violating section 3000.002, we cannot make that determination as a matter of law. *See* Tex. Att'y Gen. Op. No. KP-0088 (2016) at 3 (stating that investigating and resolving fact questions are beyond the function of the opinion process).

Application of subsections 3000.002(a)(1) and (2) to the Legislature

Your second question is whether subsections “3000.002(a)(1) and (2) establish a more stringent aesthetic method in construction, renovation, maintenance, or other alteration of a building as compared to the national model codes—which are silent as to color palettes and paint color patterns—rendering the Sections unenforceable.” Request Letter at 1–2. Subsections 3000.002(a)(1) and (2) apply to a “governmental entity,” which as defined, includes only entities

⁶*See* SOUTH PADRE ISLAND, TEX., CODE OF ORDINANCES § 4-5(A) (2018), https://library.municode.com/tx/south_padre_island/codes/code_of_ordinances?nodeId=CH4BUCO.

in the executive branch of state government and political subdivisions. *See* TEX. GOV'T CODE § 3000.001(2) (adopting definition in Government Code section 2007.002(1)(B)). Because the Legislature is not an entity in the executive branch or a political subdivision, subsections 3000.002(a)(1) and (2) do not apply to its statutory requirements.

S U M M A R Y

Chapter 3000 of the Government Code governs building regulations a governmental entity may adopt with respect to building products, materials, and methods. Subsection 3000.002(a)(1) prohibits a governmental entity from adopting an ordinance or other regulation that directly or indirectly prohibits or limits the use of products or materials approved for use by certain national model codes. Subsection 3000.002(a)(2) prohibits a governmental entity from establishing standards for building products, materials, or aesthetic methods that exceed the standards in such model codes. Determining whether an ordinance adopting color palette and pattern requirements prohibits or limits, directly or indirectly, a model code approval, or is more stringent than model code standards for building product, material, or aesthetic methods, will likely require investigation into and resolution of fact questions, which is beyond the purview of the opinion process.

Subsections 3000.002(a)(1) and (2) of the Government Code do not apply to the Legislature.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ken Paxton", with a stylized, cursive script.

KEN PAXTON
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

MURTAZA F. SUTARWALLA
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

WILLIAM A. HILL
Assistant Attorney General, Opinion Committee