

ORDINANCE 2019-04-11-0308

**AMENDING CHAPTER 35, UNIFIED DEVELOPMENT CODE, OF
THE CITY CODE OF SAN ANTONIO, TEXAS, BY AMENDING
THE HABITAT COMPLIANCE FORM.**

* * * * *

WHEREAS, the Habitat Compliance Form was established by the City Council of San Antonio, Texas, on August 20, 2009, under Ordinance No. 2009-08-20-0652; and

WHEREAS, the Habitat Compliance Form is a tool to communicate development activity to the City of San Antonio's State and Federal partners; and

WHEREAS, the City Council Community Health and Equity Committee directed City Staff on August 7, 2018, to convene a task force to recommend changes to the Habitat Compliance Form to ensure that the form was clear and understandable; and

WHEREAS, the task force held committee meetings to develop a revised Habitat Compliance Form with input from a variety of interested members of the community; and

WHEREAS, the Planning Commission held a duly noticed public hearing, considered, and made a recommendation of approval of the revised Habitat Compliance Form on March 13, 2019; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 35 of the City Code of San Antonio, Texas, the Unified Development Code, is hereby amended by adding language that is underlined (added) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

SECTION 2. Chapter 35, Appendix B, Section 35-B133, of the City Code of San Antonio, Texas, is hereby amended as follows:

Sec. 35-B133. - Habitat Compliance Form.

- (a) The owner of property subject to this chapter who submits an application to the City of San Antonio for development on/of a tract of land greater than two (2) acres in area shall submit a Habitat Compliance Form in accordance with the provisions of this section.
- (b) A property owner shall, through a signed and completed Habitat Compliance Form:
 - (1) Indicate obtainment of a section 10(a) permit, section 7 biological opinion, participation in a Regional Habitat Conservation Plan or submittal of an endangered species survey to the U.S. Fish and Wildlife Service for properties located in Karst zones 1 or 2 as outlined in the 2008 Draft Recovery Plan for Bexar County Karst Invertebrates, available on U.S. Fish and Wildlife Service's website; or for properties identified as potential Golden-Cheeked Warbler Habitat as outlined in Texas Parks and Wildlife Department Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes, *available on their website*; or,

- (2) Complete a signed, sworn, and notarized affidavit indicating a biologist survey was either not completed, or not provided to the U.S. Fish and Wildlife Service. ~~that found that no species would be impacted by the activity subject to the application to the City of San Antonio.~~

The application to the City of San Antonio shall be deemed incomplete if the Habitat Compliance Form, and affidavit if applicable, is not completed and signed, and/or the information provided is deemed to be inaccurate.

* * *

Figure 35-B133-1
Habitat Compliance Form
CITY OF SAN ANTONIO
PLANNING & DEVELOPMENT SERVICES DEPARTMENT
1901 S. Alamo, San Antonio, TX 78204

Part 1. Commentary:

For information on endangered species habitat within Bexar County as may be established, see 2008 ~~Draft~~Final Recovery Plan for Bexar County Karst Invertebrates, available on US Fish and Wildlife Service's website, https://www.fws.gov/southwest/es/AustinTexas/ESA_Sp_KarstInverts.html, and Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes by Texas Parks and Wildlife Department available on their website, https://tpwd.texas.gov/publications/pwdpubs/media/pwd_bk_w7000_0013_golden_cheeked_warbler_mgmt.pdf.

Part 2. Applicant Contact Information:

Project Name: _____	
Property Owner: _____	E-mail: _____
Address: _____	Zip code: _____ Phone: _____
Agent: _____	E-mail: _____
Address: _____	Zip code: _____ Phone: _____
Contact Person Name: _____	E-mail: _____
Company: _____	Relationship to Owner: _____
Address: _____	Zip code: _____ Phone: _____

Part 3. Property Location:

Property address or nearest street intersection if address not available: _____
Acres: _____ Ferguson map grid: _____ USGS Grid: _____
In addition to this form, please submit an aerial map designating property boundaries based on the most recently available imagery. Maps can be obtained from www.sanantonio.gov/dsd and saved into a PDF format.

Part 4. Application Type (check one):

☐ Master Development Plan (MDP)	☐ Tree Permit
☐ Major Plat	☐ Planned Unit Development (PUD) Plan
☐ Development Plat	☐ Minor Plat

Part 5. Endangered Species Act Coverage (check one):

☐ The activity subject to the application to the City of San Antonio is covered under an existing individual Section 10(a) permit or ~~a~~an individual Section 7 Biological Opinion analyzing the activity as proposed, and the activity is identical or very similar to the activity proposed in permit and located in the same geographic location. Applicants checking this box must provide either the Section 7 consultation number (_____) or the individual Section 10(a) permit number (_____). ~~Skip to section~~ Complete part 7 of this form, no affidavit required.

- ☐ The activity subject to the application to the City of San Antonio is covered by participation in the Southern Edwards Plateau Habitat Conservation Plan (SEP HCP) or another ~~an~~ approved Regional Habitat Conservation Plan. Applicants checking this box must provide a copy of the Participation Certificate. Skip to section-Complete part 7 of this form, no affidavit required.
- ☐ The activity subject to the application to the City of San Antonio is not covered by an existing Section 10(a) permit or a Section 7 Biological Opinion nor participation in an approved Regional Habitat Conservation Plan. (Complete sections-parts 6, 7 and 8 of this form (if applicable) below)

Part 6. Description for Activities Without Coverage (check one box for both sections-parts A and B):

A. Golden-cheeked Warbler Endangered Species	<u>1.</u> ☐ There is no requirement for coverage of this listed species because no No part of the tract subject to the application to the City of San Antonio contains habitat types that may be used by is located within the <u>presumptive habitat area</u> for Golden-cheeked Warblers as described below. set forth in Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes, Texas Parks and Wildlife Department, available on their website. While this requirement applies throughout the jurisdiction of the City of San Antonio, based on the U.S. Fish & Wildlife Service Recovery Plan maps for Golden-cheeked Warblers, there is a <u>rebuttable</u> presumption that areas located <u>inside/outside</u> of Loop 1604, <u>and north of U.S. Highway 90, and west of Interstate Highway 35</u> that are within the jurisdiction of the City of San Antonio, as well as areas located to the south of U.S. Highway 90 and east of Interstate Highway 35, do <u>not</u> contain habitat. <u>If the property is located in the presumptive habitat area, as described, this box may not be checked.</u> <u>2.</u> ☐ The tract <u>or portions of the tract</u> subject to the application to the City of San Antonio is within a presumptive habitat areas <u>area</u> or contains habitat types that may be used by Golden-cheeked Warblers as set forth in <u>Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes, Texas Parks and Wildlife Department, available on their website</u> and an Endangered Species Survey <u>or Habitat Assessment</u> has been completed within the last 3 years by a Biologist permitted by U.S. Fish and Wildlife and copies <u>have been sent or will be sent to:</u> U.S. Fish and Wildlife (USFWS) Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758 <u>Biologist Name and permit number</u> _____ <u>Date of Survey/Assessment</u> _____ <u>Biologist has been notified that their survey/assessment has been utilized</u> ☐ Yes ☐ No <u>3.</u> ☐ The tract <u>or portions of the tract</u> subject to the application to the City of San Antonio is within a presumptive habitat area <u>or contains habitat types that may be used by Golden-cheeked Warblers as set forth in Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes, Texas Parks and Wildlife Department, available on their website,</u> and <u>an</u> no Endangered Species Survey has <u>NOT</u> been submitted to U.S. Fish and Wildlife. (Selecting this box requires the applicant to complete the Habitat Compliance Affidavit in <u>Section-part 8 below of the form.</u>)
B. Karst Invertebrate Endangered Species	<u>1.</u> ☐ There is no requirement for coverage of these listed species because no No part of this the tract subject to the application to the City of San Antonio is located within karst zone 1 or 2 of the areas in Bexar County <u>as identified as karst zones in the USFWS 2008 Draft Bexar County Karst Invertebrates Recovery Plan</u> by the USFWS. (Applicant must provide a map demonstrating that the tract is outside of karst zone 1 or 2) <u>2.</u> ☐ The tract or portions of the tract subject to the application to the City of San Antonio is located within Karst Zone 1 or 2 as identified in the U.S. Fish & Wildlife 2008 Draft Bexar County Karst Invertebrates Recovery Plan <u>as identified by the USFWS and an</u> karst feature survey or Endangered Species Survey has been completed by a Biologist

permitted by U.S. Fish and Wildlife and copies have been sent or will be sent to:
U.S. Fish and Wildlife (USFWS) Ecological Services Field Office, 10711 Burnet Road,
Suite 200, Austin, TX 78758

Biologist Name and permit number _____

Date of Survey/Assessment _____

Biologist has been notified that their survey/assessment has been utilized ☐ Yes ☐ No

3. ☐ The tract or portions of the tract subject to the application to the City of San Antonio is located within Karst Zone 1 or 2 ~~as identified in the U.S. Fish & Wildlife 2008 Draft Bexar County Karst Invertebrates Recovery Plan~~ as identified by the USFWS and ~~no~~ a karst feature survey or Endangered Species Survey has NOT been submitted to U.S. Fish and Wildlife. (Selecting this box requires the applicant to complete the Habitat Compliance Affidavit in Section part 8 below of the form.)

Part 7. Owner or Authorized Representative (form is considered incomplete without this ~~section-part~~ part of the form completed):

I certify that the information provided in this Habitat Compliance Form is true and accurate.

Print Name: _____ Title _____

Signature: _____ Date: _____

☐ Owner

☐ Authorized Representative

☐ I affirm that I am authorized to sign this form on behalf of the owner.

Address: _____ City: _____ State _____ ZipCode _____

E-mail: _____

Part 8. Affidavit of Compliance (required for properties in karst zones 1 or 2 or located in the area identified as potential habitat as set forth in Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes, Texas Parks and Wildlife Department, available on their website when there is no Section 10(a) permit, Section 7 biological opinion, Regional Habitat Conservation Plan, nor endangered species survey submitted to US Fish and Wildlife):

Affidavit of Compliance

Before me, the undersigned authority, on this day personally appeared _____ ("Affiant") who, being first duly sworn, upon his/her oath states:

My name is _____ and I am the owner of the property that is the subject of this application to the City of San Antonio.

_____ A habitat assessment/survey was not conducted or I have elected not to provide the information.

Please explain below with an additional narrative why no survey has been conducted or why you have elected to not provide the information:

~~_____ A habitat assessment/survey was conducted by a biologist permitted by U.S. Fish & Wildlife Service, _____ (name of individual and firm) #TE _____ (number), and concluded that no species will be impacted by the activity subject to the application to the City of San Antonio and I am relying on that assessment/survey.~~

I, as the owner, understand that I am responsible for the property's compliance with the Endangered Species Act.

Signed this _____ day of _____, _____.

Signature: _____

STATE OF TEXAS

§
§

COUNTY OF BEXAR

§

Sworn to and subscribed to before me on _____, by _____,

Notary Public, State of Texas

SECTION 3. All other provisions of Chapter 35 of the City Code of San Antonio, Texas, shall remain in full force and effect including the penalties for violations as made and provided for in Section 35-491.

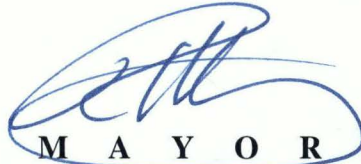
SECTION 4. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

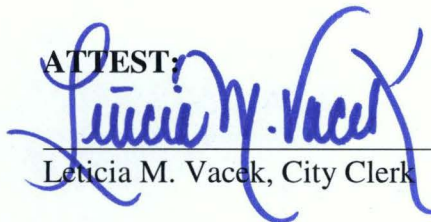
SECTION 5. The City Clerk is directed to publish notice of this ordinance amending City Code, Chapter 35, Unified Development Code. Publication shall be in a newspaper in the City in accordance with Section 17 of the City Charter.

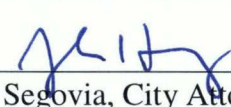
SECTION 6. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 7. This ordinance shall become effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 11th day of April, 2019.


M A Y O R
Ron Nirenberg

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Andrew Segovia, City Attorney
for

Agenda Item:	15 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, 19, 21, 22, 23A, 23B)						
Date:	04/11/2019						
Time:	10:13:38 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance amending Chapter 35, Unified Development Code, of the City Code of San Antonio, Texas, by amending Section 35-B133 - Habitat Compliance Form. [Roderick Sanchez, Assistant City Manager; Michael Shannon, Director, Development Services Department]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
Art A. Hall	District 2		x				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x			x	
Clayton H. Perry	District 10		x				