



ORDINANCE NO. 28503

1 AN ORDINANCE relating to right-of-way occupancies; amending Chapter 9.08 of
2 the Tacoma Municipal Code, relating to right-of-way occupancies, to
3 facilitate the appropriate deployment of next generation cellular network
4 infrastructure in public right-of-way.

4 WHEREAS wireless communication providers have begun to deploy what is
5 known as fifth generation wireless facilities to increase the speed and coverage of
6 wireless communication services, and

7 WHEREAS fifth generation wireless services rely significantly on the
8 deployment of many small antenna facilities, known as small cells, in public
9 rights-of-way to augment traditional communication tower technology, and

10 WHEREAS the Tacoma Municipal Code (“TMC”) currently lacks design and
11 other standards applicable to small cell installations in the public right-of-way, and

12 WHEREAS on November 14, 2018, City staff provided the City Council with
13 updates related to future installation of Small Cell infrastructure in City rights-of-
14 way, and the City Council asked that appropriate small cell development standards
15 be formulated for consideration, to mitigate negative impacts from small cells,
16 including to the aesthetic environment, and

17 WHEREAS representatives from Public Works, Tacoma Public Utilities,
18 Media and Communication Offices, and Planning and Development Services have
19 worked collaboratively to prepare development standards, and, on January 31,
20 2017, reviewed the proposed TMC amendments with wireless communication
21 industry stakeholders, and

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WHEREAS the proposed amendments would codify procedures and design standards related to small cell installations, and if approved, the proposed regulations would amend the TMC as follows:

- Limit height above existing pole to 10 feet; new poles must not exceed height of 45 feet;
- Require installation to be same color as pole and require shrouding of cables;
- Antennas on pole must be flush mounted or, if top-mounted, must comply with diameter requirements;
- If required to replace pole, the new pole must accommodate cables internal to the pole;
- Ground level equipment, if proposed, must be screened;
- If in historic district or in business district with established pole design, the installation will be reviewed for compliance with district;
- Increase the permit fee in step towards fiscal sustainability, and

WHEREAS City staff recommends that the proposed TMC amendments be approved; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That Chapter 9.08 of the Tacoma Municipal Code is hereby amended as substantially as set forth in the attached Exhibit "A."

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



EXHIBIT "A"

Chapter 9.08
STREET RIGHT-OF-WAY OCCUPANCIES

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Sections:

- 9.08.010 Definitions.
- 9.08.020 Occupancy permit required.
- 9.08.030 Application – Information required.
- 9.08.040 Processing of application.
- 9.08.045 Small cell design.
- 9.08.050 Indemnity deposit on approved applications for permit.
- 9.08.060 Indemnity to save the City harmless from claims.
- 9.08.070 Revocation of permits.
- 9.08.075 Fees.
- 9.08.080 Issuance of permits.
- 9.08.090 Validation of prior permit.

9.08.010 Definitions.

The term "street right-of-way occupancy" whenever used in this chapter shall be held and construed to mean and include any surface, above surface and subsurface occupancy or use of any public right-of-way wherever located in the City of Tacoma, and such subsurface use shall include any vault, bin, cellar, passageway, pipeline, tank, elevator, chute, or any other structure or improvement.

The term "garden activities," whenever used in this chapter, shall be held and construed to mean planting vegetation and installation of hardscape elements associated with landscaping, such as pavers or raised beds that conform to the Public Works Design Manual in the right-of-way.

The term "small cell facility," whenever used in this chapter, shall mean a personal wireless services facility that meets both of the following qualifications:

- 1. Each antenna is located inside an antenna enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of not more than three (3) cubic feet; and.
- 2. Primary equipment enclosure are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume; electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

9.08.020 ~~Ocupaney permit~~Written Permission Rrequired.

Except as exempted below, ~~it~~ is unlawful for anyone to use any public right-of-way for private purposes without a written ~~permit permission~~ from the City of Tacoma and without complying with all of the provisions of this chapter in relation thereto; provided that nothing herein contained shall apply to street maintenance work performed by the City of Tacoma, utility installations covered by franchise (not including small cell facilities), street or sewer installation and improvement work authorized by ordinance, or street improvement projects under contract with the City of Tacoma.

If a small cell facility is attached to a City asset, the installation shall be permitted through a Pole Attachment Agreement, and other appropriate development permits, including a work order. If a new pole, not owned by the City, is necessary to accommodate the small cell facility, a Right-of-



Way Occupancy Permit will be required for the pole in addition to other appropriate development permits, including a work order.

Small cell facility installations shall be subject to the procedural requirements in Section 9.08.030, the development standards contained in Section 9.08.045, and shall pay the permit fees identified in Section 9.08.075. Other sections do not apply.

9.08.030 Application – Information required.

Application for permits herein provided for shall be filed with the Director of Public Works City of Tacoma Planning and Development Services Department, of the City of Tacoma upon a form provided by him, which application shall contain Information required in the application includes:

A. An accurate description of the public place or portion thereof desired to be used as herein specified;

B. The use desired to be made of such public place by the applicant;

C. The plans and specifications for any utility or structure desired to be constructed, erected, or maintained by the applicant in or on a public place; and

D. If the request is to construct an areaway, fuel opening, sidewalk elevator or door or other subsurface use of said right-of-way, a certificate of title or other document or indicia of title showing the applicant to be the owner of the premises abutting said public right-of-way where the said subsurface use or improvement is to be conducted or constructed.

E. If the request is for a surface occupancy of right-of-way located within shoreline segments S-1 through S-12, all further construction and development on such right-of-way shall be subject to Chapter 13.10 of the Official Code of the City of Tacoma and Chapter 90.58 RCW. The Director of Public Works may require that the applicant comply with the provisions of said Chapter 13.10 prior to the issuance of a permit pursuant to this chapter.

F. If the request is a small cell facility, the following information shall be provided:

1. Notice shall be published in a newspaper of general circulation once per week, for a minimum period of 30 days, and an affidavit of publication shall be provided at the time of application as proof that the required notice has occurred.

2. A letter signed by the applicant stating the facility will comply with all FAA regulations and applicable standards, and all other applicable federal, state, and local laws and regulations.

3. A signed statement indicating that such installation, repair, operation, upgrading, maintenance, and removal of antenna(s) by the wireless communication provider shall be lawful and in compliance with all applicable laws, orders, ordinance, and regulations of federal, state, and local authorities having jurisdiction.

4. A signed statement that the applicant agrees to remove the facility within one year of abandonment.

5. Cover Sheet containing:

a. Correct project location.

b. Clear project description.

6. A Radio-Frequency (RF) report demonstrating compliance with FCC Standards

7. Site Plan, including any new vaults proposed

8. Elevation Sheet showing:

a. Location of Node ID sticker (low contrast colors) and RF warning sticker. Show RF warning sticker facing out to the street and near antenna, or away from the street and near antenna if no window within 50 feet.



- b. Indicate height to top of pole, antenna, top and bottom of equipment enclosures.
- c. Show any existing or proposed guy wires.
- d. Show equipment enclosures.
- e. Show other elements, such as NEMA, PBX, or J boxes, ground bus bars, and base plate mounts.
- f. Show offset (distance) of equipment cabinets from pole.

9. Photo Simulations showing

- a. Antenna configuration and cabling and equipment sizes, offsets (cabinets from pole)
- b. RF warning and node identification stickers, if visible from given perspectives
- c. Perspectives that provide a true sense of distance to nearest residential windows or primary facades of historic buildings.
- d. New pole if existing pole is being replaced.

9.08.040 Processing of application.

The Director of Public Works Planning and Development Services, or designee, shall cause each application to be examined to determine if it complies with the provisions of this chapter. Representatives of the City of Tacoma shall inspect the premises which are desired to be used to determine whether or not the proposed use conforms with the provisions of this chapter. Any application for a permit to construct, erect, or maintain any building, structure, or use on or under the surface of the property shall ascertain if the plans and specifications conform to the regulations pertaining to safety, material, and design of the Tacoma Building Code and Zoning Code. The Chief Building Official shall then endorse his findings upon the application and transmit the same to the Director of Public Works Planning and Development Services.

If the Director of Public Works Planning and Development Services determines that the application conforms to the requirements of this chapter, and also that the proposed use of such public place will not unreasonably limit or encroach upon the public’s right to travel upon said right-of-way, or the ancillary right to occupy said right-of-way for utility purposes, the Director of Public Works Planning and Development Services may approve the application. ~~If approved, the Director of Public Works shall fix the time for which the permit may be granted, and shall direct the Department of Tax and License to issue a permit upon the applicant’s compliance as herein specified with the provisions of this chapter relating to indemnity of the City of Tacoma.~~ In approving said permit, the City Engineer and/or Director of Public Works Planning and Development Services may impose such reasonable conditions as are required to meet the standards set forth in this chapter and to protect the paramount rights-of-way for travel and to protect the safety of the traveling public, and other public purposes.

When related to installation of small cell facilities, applications may be submitted in batches of up to 25 applications at a time. The batches must be limited to one facility design and all on same type of pole (i.e.: light pole, power pole, other).

9.08.045 Small cell design.

Small cell facilities must demonstrate compliance with the following development standards:

A. Small cell facilities proposed in historic districts must demonstrate compatibility with historic district standards. If approval by the City’s Landmarks Commission is necessary, such approval must be obtained prior to installation. Small cell facilities proposed on decorative poles designed for a particular business district or neighborhood district will be evaluated for consistency with the established pole design for that business district.

B. Small cell facilities must be located on existing poles unless it can be demonstrated through engineering that location on an existing pole is not feasible.



C. Antenna.

- 1 1. The antenna(s) must be same color as pole to which it is attached.
- 2 2. The antenna(s) must be flush mounted (not allowed on an extension/side arm) or an in-line top
mount. If utilizing a top-mount, the antenna may not exceed the diameter of the pole or 16 inches,
whichever is greater.
- 3 3. The antenna(s) must not extend more than 10 feet above an existing pole. Additional height may
be allowed at the discretion of the Director if it is demonstrated that the additional height is needed
to provide adequate safety clearance. If the antenna is mounted on a new pole, the total height may
not exceed 45 feet.

D. Equipment and Cables.

- 6 1. The equipment must be the same color as the pole to which it is attached.
- 7 2. Equipment with cooling fans shall not be located within 15 feet of a residential structure and
shall not be located in alignment with windows of a residential structure.
- 8 3. Equipment enclosures must be stacked together and no more than 4 inches offset from pole.
- 9 4. Cables must be located inside the pole or concealed on the outside of the pole through shrouding
or painting the same color as pole, whichever will minimize aesthetic impacts to the greatest extent
possible.

E. New/Replacement Poles

- 11 1. Small cell facilities must be located on an existing pole unless it can be demonstrated through
engineering that location on an existing pole is not feasible. In this context, the need to replace a
pole does not constitute “not feasible”.
- 12 2. When determined by the City that the existing city pole cannot accommodate the proposed small
cell facility, the City pole must be replaced by the wireless carrier. The replaced pole shall meet the
City’s specifications and will be replaced at the wireless carrier’s cost.
- 13 3. When installing a new pole, the new pole shall accommodate cables internal to the pole.
- 14 4. New poles and replacement poles must not exceed the height limit in Subsection C above.
- 15 5. If ground-level equipment is proposed, the equipment shall be screened with plantings. This
requirement will be waived when it can be demonstrated that the planting will conflict with and/or
create a hazard to existing utility infrastructure, sight distance constraints, or ADA.

9.08.050 Indemnity deposit on approved applications for permit.

18 If the Director of ~~Public Works~~Planning and Development Services determines that there is a
19 probability of expense to the City arising from the applicant’s proposed use of public right-of-way,
20 the applicant shall deposit with the Director of ~~Public Works~~Planning and Development Services a
21 cash deposit. The amount of the cash indemnity deposit shall be determined by the Director of
22 ~~Public Works~~Planning and Development Services at the time of approving the application, and
23 shall be governed by the anticipated amount and extent of expense to the City as determined by the
24 Director of ~~Public Works~~Planning and Development Services. Such indemnity deposit shall be used
25 to pay the cost, plus 15 percent thereof, of inspections, surveys, plans, and other services performed
26 by the City, of: restoring the street; removing any earth or other debris from the street; replacing
any utility interrupted or damaged; or completing any work left unfinished; filing an indemnity
agreement with the City, if such an agreement is required within the permit; and any other expenses
the City may sustain in conjunction with the permitted work. The balance of the cash indemnity
deposit, if any, after the foregoing deductions, shall be returned to the applicant. If the indemnity
deposit be insufficient, the applicant will be liable for the deficiency. If the Director of ~~Public~~
~~Works~~Planning and Development Services determines that engineering studies must be made prior



to the approval of any application for permit, the cost of such study shall be paid for by the applicant, or deducted from his indemnity deposit.

1 The Director of Public Works Planning and Development Services may require the applicant to file
2 with the City a surety bond approved as to surety and as to form by the City Attorney, which bond
3 shall run for the full period of said permit, in a sum to be determined by the Director of Public
4 Works Planning and Development Services, but not less than \$2,000.00, and conditioned that such
5 applicant shall faithfully maintain such installation in a safe and secure condition and shall
6 faithfully comply with all the terms of the permit and all the provisions of this and all other
7 ordinances of the City of Tacoma, and shall faithfully perform the removal of, or reimburse the City
8 for, the cost of removing such installation and restoring the right-of-way to the same or better
9 condition as though such installation had not existed, upon the revocation or voluntary termination
10 of said permit.

7 **9.08.060 Indemnity to save the City harmless from claims.**

8 The Director of Public Works City of Tacoma may require the applicant to file with the Department
9 of Public Works Planning and Development Services, prior to the effective date of such permit, a
10 certified copy, together with evidence of premium payment, of a comprehensive general insurance
11 policy in a form approved by the City of Tacoma, issued by a company duly authorized to do
12 business in the State of Washington. Said policy shall run for the duration of the permit. Coverages
13 provided by the insurance policy shall include, but shall not be limited to, all of the usual coverages
14 commonly referred to by the insurance industry as:

Operations Liability

Products/Completed Operations Liability

Owner's and Contractor's Protective Liability

Blanket Contractual Liability

14 The insurance policy shall: (1) name the City of Tacoma as an additional insured; (2) apply as
15 primary insurance, regardless of any insurance which the City may carry; (3) include a "cross-
16 liability" (severability of interest) clause; and (4) include limits of protection of not less than
17 \$500,000.00 combined single limit, bodily injury and property damage. It is to be understood and
18 agreed that the obligation to permittee to hold harmless the City from claims for damages arising
19 out of the operations related to the permit shall not be limited to the amount of insurance provided
20 by the permittee. The insurance policy shall further contain a clause obligating the company issuing
21 the same to give notice to the Risk Manager of the City of Tacoma 30 days before the cancellation
22 of said policy.

19 If the application is for a permit to construct or maintain an areaway, fuel opening, sidewalk
20 elevator or door, or to use or occupy the planting strip by erecting a bulkhead, steps, retaining wall,
21 rockery, structure, or any facility therein, in addition to the foregoing comprehensive general
22 insurance policy, the owner of the premises in front of which, and in connection with which, the
23 same is to be constructed, erected, maintained, used, or occupied, and any existing lessee,
24 sublessee, tenant, and/or subtenant using or occupying the basement of the premises in connection
25 with which such structure is to be used, before the permit is issued, shall, in the manner provided by
26 law for the execution of deeds, execute and deliver to the City of Tacoma upon a form to be
supplied by the Director of Public Works Planning and Development Services, an agreement in
writing, signed and acknowledged by such owners and by such existing lessee, sublessee, tenant,
and/or subtenant, and containing an accurate legal description of said premises and a covenant on
the part of such owner, lessee, sublessee, tenant, and/or subtenant, for themselves and their heirs,
executors, administrators, successors, assigns, lessees, sublessees, tenants, and subtenants, forever
to hold and save the City of Tacoma free and harmless from any and all claims, actions, or damages



of every kind and description which may accrue to, or be suffered by, any persons by reason of the use of such public place, or of the construction, existence, maintenance, or use of such structure.

1 If the application is for a permit to construct and maintain an areaway, such agreement shall also
2 contain a covenant on the part of the persons or corporations executing the same, for themselves
3 and their heirs, executors, administrators, successors, assigns, lessees, sublessees, tenants, and
4 subtenants, assuming the duty of inspecting and maintaining all services, instrumentalities, and
5 facilities installed in the areaway to be constructed or occupied under authority of such permit, and
6 assuming all liability for, and saving and holding the City of Tacoma harmless from any and all
7 loss, damage, or injury that may result to his or their own person or property, or the person or
8 property of another, by reason of such services, instrumentalities, or facilities.

9 In addition, such agreement shall contain a provision that the permit is wholly of a temporary
10 nature, that it vests no permanent right whatsoever, that upon 30 notice, posted on the premises, or
11 by publication in the official newspaper of the City of Tacoma, or without such notice, in case the
12 permitted use shall become dangerous, or such structures shall become insecure or unsafe, or shall
13 not be constructed, maintained, or used in accordance with the provisions of this title, the same may
14 be revoked and the structure and obstructions ordered removed at the expense of the grantee of the
15 permit. Every such

16 agreement shall be retained by the Department of ~~Public Works~~Planning and Development Services
17 in the files and records of that Department.

18 **9.08.070 Revocation of permits and removal of development.**

19 All permits and/or development granted under the provisions of this chapter may, in any case, be
20 revoked by the Director of ~~Public Works~~Planning and Development Services, or designee, upon 30
21 days' notice, or without notice in case any such use or occupation shall become dangerous or any
22 structure or obstruction permitted shall become insecure or unsafe, or shall not be constructed,
23 maintained, or used in accordance with the provisions of this chapter. The development shall be
24 removed at the expense of the permittee and/or adjacent property owner.

25 If any such structure, obstruction, use, or occupancy is not discontinued on notice to do so by the
26 Director of Planning and Development Services, the ~~Director of Public Works~~City may forthwith
remove such structure or obstruction from such place, or make such repairs upon such structure or
obstruction as may be necessary to render the same secure and safe, at the expense of the ~~grantee~~
~~of permittee~~ ~~the permit~~ permit or ~~his~~ successor, and such expense, together with the cost of its
collection, may be collected in the manner provided by law. As an alternative, the City may enforce
under Title 8.

9.08.075 Fees.

The City Council hereby authorizes the fees for street occupancy permits set forth in the schedule
below, ~~and all previously adopted fee schedules are hereby rescinded, except that the existing fee
schedule for Shoreline Districts shall remain in effect until superseded by an alternative use fee as
referenced in Section 2 below.~~ Application and renewal fees are established commensurate with the
costs of administration involved in the issuance and continuance of the permits. ~~Application and
renewal fees do not apply for garden activities.~~ Use fees are established for certain commercial uses
occupancies of the street rights-of-way, and are payable in addition to the application ~~and renewal
fees.~~ Sidewalk cafes are recognized as a special street occupancy that promotes desirable street life
that can have favorable economic impact by encouraging visitation to City business districts and
result in patronage of its businesses. Because sidewalk cafes are an encouraged use and promote
various public benefits, no fee shall be charged for the street occupancy permit fees for sidewalk
cafes. In addition:

A. Commercial Use Fees will be charged for:



1. Above-ground development located in the right-of-way adjacent to commercial uses, including private parking areas, signs, and construction fencing.

2. Habitable space located under vaulted sidewalks.

3. Underground development located in the right-of-way adjacent to commercial uses, including private utilities (regardless if it is located under a vaulted sidewalk), monitoring wells, soldier beams, tie backs, and soil nails.

B. Commercial Use Fees will not be charged for:

1. Alternative walkway materials and amenities required by code, such as benches, bike racks and irrigation for vegetation in the right-of-way.

2. Development adjacent to single-family and duplex properties.

3. Sidewalk Cafes.

Street-Right-of-Way occupancy permit fees shall be collected by ~~the Director of Finance~~Planning and Development Services Department, and payment of ~~said required~~ fees is a condition of the issuance and continuance of any such permit. ~~In order to effectuate the ongoing collection of said fees, holders of permits shall be notified by the City a minimum of one month in advance, to pay applicable fees or the permit will be revoked. All fees collected pursuant to this chapter shall be deposited in the General Fund.~~ Commercial Annual Use Fees shall be deposited in the General Fund.

**SCHEDULE OF
STREET-RIGHT-OF-WAY OCCUPANCY PERMIT FEES
ADMINISTRATIVE FEES**

General Application Fee* (includes processing, initial inspection, review, document preparation)	<u>\$320640</u>
Sidewalk Café – Application Fee** (includes processing, initial inspection, review, document preparation)	No Fee
Annual Renewal Fee (includes site inspection for compliance, file review, insurance review and application of fee escalators/adjustments as required)	\$ 90

*Includes application for small cell facilities, regardless if on City pole or private pole; except application fee may be waived if review is conducted under a work order.

**The elimination of fees is designed to encourage this use, which the City finds promotes economic development and revitalization of its business districts.

GENERAL ANNUAL USE FEES

Commercial Occupancy - Exclusive Use (based on square footage occupied)	10% of Assessed Land Value*
Commercial Occupancy - Non-exclusive Use (based on square footage occupied)	5% of Assessed Land Value*
Subsurface Use (based on square footage occupied)	2.5% of Assessed Land Value*
Minimum Annual <u>Commercial Occupancy Fee</u> (for commercial occupancies, <u>unless exempted herein</u>)	\$120



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<u>Small Cell Facility when subject to Pole Attachment Agreement*</u>	<u>No Fee</u>
Sidewalk Cafés (subject to annual renewal fee only – annual permit to be posted onsite)	None
<u>Non-Commercial Occupancy</u> (subject to annual renewal fee only)	<u>None</u>

*Assessed Land Value is abstracted from the Pierce County Assessor’s property tax assessment for the entire property excluding improvement (building) value. The land value used is that of the property abutting the street occupancy area except in any case where the assessment of the abutting property is inconsistent with other, comparable properties in the vicinity. In such a case, the City may adjust the assessed value for the purpose of setting fees for street occupancies.

**Small Cell Facilities on private poles will be subject to the commercial Occupancy General Annual Use Fee.



SPECIFIC USE FEES

Signs – Annual Fee

Commercial	\$600
Non-Commercial (directional signs or similar)	\$ 75

Monitoring Wells – Annual Fee

One well	\$175
Each additional well	\$150

Subsurface Structural Supports – One-Time Fee (per location)

Soldier Beams	\$700
Soil Nails	\$700
Tie-Backs	\$700

~~Section 1. Except as provided for in Section 2 below, this ordinance shall have an effective date of April 1, 2006, provided however, that General Use Fees calculated as a percentage of assessed value shall take effect in three phases. During the first year, beginning April 1, 2006, General Annual Use Fees shall be applied at a rate of 33 percent of the calculated use fee; in the second year, beginning January 1, 2007, General Annual Use Fees shall be applied at a rate of 67 percent of the calculated use fee; and in the third year, beginning January 1, 2008, all General Annual Use Fees shall be applied at 100 percent; however, in no event shall any General Use Fee be less than the set minimum of \$120. General Annual Use Fees for new Street Occupancy Permits that are in excess of \$120 shall be prorated in the first year to a renewal date of January 1st; however, in no event shall any General Use Fee be less than the set minimum of \$120.~~

~~Section 21. The new use fees provided for in Section 1 above shall not apply to street occupancies in the Shoreline Districts until an alternative use fee formula is developed that recognizes the unique characteristics of the non-exclusive parking uses within the rights-of-way of the Shoreline Districts. Said additional use fee formula shall be developed no later than June 30, 2006.~~

9.08.080 Issuance of permits.

Upon approval by the Director of ~~Public Works~~Planning and Development Services of an application for the use or occupation of a public right-of-way, the Department of ~~Tax and License~~Planning and Development Services shall issue a permit therefor. The original permit shall remain in the custody of the ~~Director of Tax and License~~Planning and Development Services Department and a copy shall be given to the grantee.

9.08.090 Validation of prior permit.

~~Prior p~~Permits issued prior to the adoption of this Ordinance pursuant to Ordinance No. 15068 of the City of Tacoma (previously codified as Chapter 9.08) shall remain in force and effect for the term of said permit; provided that, upon the renewal, extension, or reissuance of such permits, they shall conform to the provisions of this chapter.