

RID (Rule Interpretation Decision)
(Use additional sheets as necessary)

Type of RID	Requested Response Time	DSD Assigned RID # 108
Customer RID <input type="checkbox"/>	24 hours <input type="checkbox"/>	
Internal Staff RID <input type="checkbox"/>	10 working days <input type="checkbox"/>	
	As time available <input type="checkbox"/>	

- 1. Project Name:** The Oaks II
- 2. Project Number:** n/a
(Plat #, Zoning Case #, etc.)
- 3. Project Street Address:** South of Silicon Drive and west of Network Boulevard
(If not available nearest intersection of two public streets)
- 4. Applicant Name:** Kaufman & Killen, Inc.
- 5. Applicant Address:** 100 West Houston Street, Suite 1250
- 6. Applicant Telephone #:** (210) 227-2000
- 7. Applicant e-mail Address:** ashley@kk-lawfirm.com
- 8. Rule in Question:** Unified Development Code
§35-311, Table 311-2 Nonresidential Use Matrix
- 9. Applicant's Position:**

Date: May 21, 2012 **Contact:** Ashley Farrimond **Contact Telephone #:** (210) 227-2000 ext. 18

Television and radio stations with antennas or transmission towers are not identified uses in the City of San Antonio ("City") Unified Development Code ("UDC") Table 35-311-2 Nonresidential Use Matrix. The UDC Supplemental Use Regulations in Section 35-385 permit radio or television antennas and transmission towers by right in all non-residential base zoning districts. Radio and television stations are not mentioned in this section or elsewhere in the UDC.

In the event a specific use is not provided for in the UDC Use Matrix, the Director of Development Services "shall make a determination if a use not mentioned can reasonably be interpreted to fit into a use category where similar uses are described." UDC Section 35-311(b)(3).

Radio and television stations are offices that provide a service. Stations provide broadcast content to listeners and viewers within their designated market area and are licensed by the FCC. Stations generally broadcast a mix of locally originated programming, including

local news, and are supplemented by network programming. Broadcasting of programming is completed with antennas or transmission towers, which are permitted by right in all non-residential zoning districts.

Radio and television stations are materially similar to the “service” uses within the UDC Use Matrix. Service uses are permitted in a broad range of base zoning districts. Further, radio and television stations are directly associated with radio and television antennas or transmission towers, which are permitted by right in all non-residential base zoning districts.

For these reasons we request that the Director of Development Services issue a Rule Interpretation Decision confirming that “radio and television stations” are a use permitted by right in office, commercial, and light industrial base zoning districts.

10. Staff Finding:

(Including date of finding and name of city staff person formulating finding)

Date: 5/22/2012 **Contact:** Andrew Spurgin **Contact Telephone #:** 207-8229

As discussed in RID #81 (July 2, 2009) there is symmetry in Section 35-385 between Radio and Television Antennas and Wireless Communication Systems.

Staff finds that UDC§35-385 governs the zoning regulations for the placement and installation of wireless towers for radio and television antennas (R/TV), and wireless communication systems (WCS) facilities. As this section is located within the Supplement Use standards of Article III of the UDC, it is intended to provide predictable standards for the placement of such towers throughout the City of San Antonio.

Staff finds that UDC§35-385 (a) governs the scope and applicability of the regulations found in §35-385

- (a) **Applicability.** *The provisions established in this section shall be applied in the manner described below:*
- (1) *The installation of antenna support structures in nonresidential zones shall be a use permitted by right provided the following requirements are met:*
 - A. *Radio and television antennas must comply with §35-385(b)*
 - B. *Wireless communications systems must comply with §35-385(e)*
 - (2) *The installation of antenna support structures in residential zones shall be a used allowed by specific use authorization provided the following requirements are met:*
 - A. *Radio and television antennas must comply with §35-385(c)*

B. *Wireless communications systems must comply with §35-385(d)*

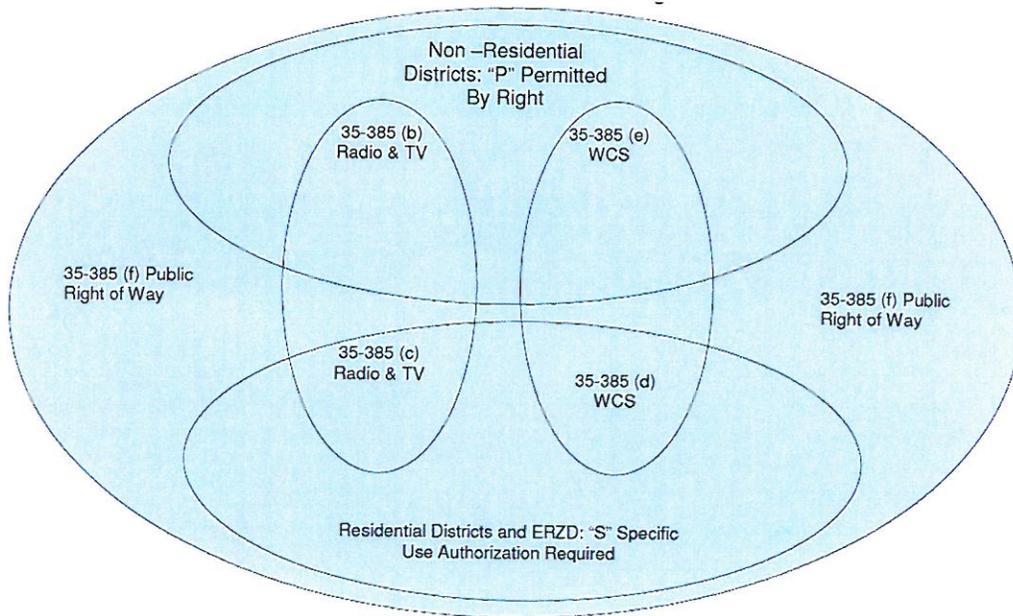
(3) *Access to public property in all zoning districts for the purpose of installing wireless communications systems shall be allowed by complying with the requirements of §35-385(f).*

(4) *Wireless communications systems, regardless of the zoning district in which they are installed, must comply with the additional requirements found in §35-385(g).*

Four subsections in 35-385 follow:

1. Subsection 35-385 (b) “Radio and Television Antennas” – this section governs R/TV in nonresidential districts
2. Subsection 35-385 (c) “Radio and Television Antennas in Residential Zoning Districts.” – this section governs R/TV in residential districts
3. Subsection 35-385 (d) “Wireless Communications Systems” – this section governs WCS in residential districts
4. Subsection 35-385 (e) “Wireless Communications Systems Permitted by Right.” – this section governs R/TV in nonresidential districts.
5. Subsection 35-385 (f) “Wireless Communication Systems in Public Right of Way” – this section governs the use within the public right way and land owned by the City of San Antonio, CPS Energy or San Antonio Water System.

The Venn diagram below illustrates the symmetry between both types of wireless systems.



Based on discussions with the applicant, staff understands that a television station office with a communication antenna is proposed. There is no equivalent use in UDC Table 311-2. In such cases the Director is authorized to interpret the UDC permitted use matrix in accordance with Section 35-311 (b):

(b) Uses Not Mentioned.

(1) Uses Not Permitted Unless Specifically Enumerated. No building permit shall be issued for a use not specifically mentioned or described by category in the Use Matrix. Evaluation of these uses shall be as set forth in subsection (3), below.

* * * * *

(3) Interpretation - Materially Similar Uses. The director of development services shall make a determination if a use not mentioned can reasonably be interpreted to fit into a use category where similar uses are described. Interpretations may be ratified by the city council upon recommendation by the zoning commission at a regularly scheduled meeting. It is the intent of this article to group similar or compatible land uses into specific zoning districts, either as permitted uses or as uses authorized by a specific use permit. Uses not listed as a permitted or specific use permit shall be presumed to be prohibited from the applicable zoning district. In the event that a particular use is not listed in the Use Matrix, and such use is not listed as a prohibited use and is not otherwise prohibited by law, the director of development services shall determine whether a materially similar use exists in this section. Should the director of development services determine that a materially similar use does exist, the regulations governing that use shall apply to the particular use not listed and the director's decision shall be recorded in writing. Should the director of development services determine that a materially similar use does not exist, the matter may be referred to the zoning commission for consideration for amendment to this chapter to establish a specific listing for the use in question. Unless an appeal is timely filed pursuant to section 35-481 of this chapter, a decision of the director of development services pursuant to this section is deemed to be valid. If, when seeking periodic ratification of interpretations, the director's interpretation is reversed, then decisions made in reliance on the director's interpretation shall be deemed to be nonconforming uses.

11. Staff Position:

(Including date position presented internally and name of city staff person formulating position)

Date: 5/22/2012 **Contact:** Andrew Spurgin **Contact Telephone #:** 207-8229

Staff's position is that a radio/television (R/TV) antenna is a permitted in the nonresidential districts as provided in 35-385(a)(1) and this is consistent with current business practices – most recently zoning case Z2012097 at another location in the City.

Staff's position is that a radio or television station office is materially similar to other "Service" uses listed in Table 311-2 and specifically the uses permitted in the O-1, O-1.5, O-2, C-2, C-3, D, L and I-1 districts.

For these reasons the applicant's proposed radio and/or television station office with communication antenna should be a permitted use in the O-1, O-1.5, O-2, C-2, C-3, D, L and I-1 districts provided that the supplemental use regulations of 35-385(b) are followed for the antenna structure and any accessory uses comply with Section 35-370 "Accessory Use and Structure Regulations."

12. Departmental Policy or Action:

(Including date of presentation of policy or action to the applicant, the effective date of the policy or action, schedule for pursuing an amendment to the code if required and signature of the Director)

Date of policy/action: 6/1/12

Effective Date of policy/action: immediate

Accepts staff position and recommends the following code change for inclusion in the next available UDC update program:

35-385 Radio, Television Antennas, and Wireless Communication Systems

(a) *Applicability.* *The provisions established in this section shall be applied in the manner described below:*

(1) The installation of antenna support structures in nonresidential zones shall be a use permitted by right provided the following requirements are met:

C. Radio and television antennas must comply with §35-385(b)

D. Wireless communications systems must comply with §35-385(e)

(4) The installation of antenna support structures in residential zones shall be a used allowed by specific use authorization provided the following requirements are met:

A. Radio and television antennas must comply with §35-385(c)

B. Wireless communications systems must comply with §35-385(d)

(5) Access to public property in all zoning districts for the purpose of installing radio and television communication use antennas or wireless

communications systems shall be allowed by complying with the requirements of §35-385(f).

- (4) *Wireless communications systems, regardless of the zoning district in which they are installed, must comply with the additional requirements found in §35-385(g).*

(b) Radio and Television Antennas. *Radio and television communication use antennas, ~~limited to those used by the federal licensed amateur radio operators, unlicensed citizens band radio operators, and private citizens receiving television signals, including satellite dish antennas,~~ shall be considered as permissible accessory uses in all zoning districts.*

(1) Height. *The height of an antenna shall be the total maximum to which it is capable of being raised and shall be measured from the finished grade adjacent to the antenna or antenna support structure if ground-mounted or from the peak of the roof if roof-mounted. Antennas within nonresidential districts shall comply with the height and setback requirements for the particular district Section 35-517. Further, all antennas and antenna support structures shall comply with the height restrictions of the joint airport and airport hazard zoning regulations, of this article. All antennas and antenna support structures shall comply with the height restrictions of the joint airport and airport hazard zoning regulations, division 4 this chapter, (35-331 Airport Hazard Overlay District (AHOD)).*

(2) Building Permit. *A building permit from the department of ~~planning and~~ development services shall be required for the installation of any roof-mounted antennas or antenna support structure over twelve (12) feet above the peak of the roof and any ground-mounted antennas or antenna support structure over twenty-five (25) feet in height. A permit shall be issued only when there is full compliance with this section and the applicable provisions of the International Building Code. Applications for a permit shall be accompanied by the following in duplicate:*

- A.** *Construction drawings showing the proposed method of installation.*
- B.** *The manufacturer's recommended installations, if any.*
- C.** *A diagram to scale showing the location of the antennas, property and setbacks, easements, power lines, and all structures.*
- D.** *Certification by a structural or civil engineer registered by the State of Texas that the proposed installation complies with the structural requirements of the International Building Code.*

(3) Maintenance. *All antennas shall be maintained in good condition and in accordance with the requirements of this section. No additions or modifications shall be made to an antenna, unless it is in conformity with the International Building Code and this section.*

(4) Historic Landmarks or Historic Districts. *The installation of any antenna or antenna support structure within the property of a historic landmark or in a historic district shall require the approval of the historic and design review commission ~~board~~.*

(5) Uses Not Permitted. *Antennas not otherwise permitted under these regulations may be permitted as a specific use authorization pursuant to Section*

35-423. permit if the applicant is able to present clear and convincing evidence to the board that the effect of the regulations on the applicant precludes effective communication.

Table 311-2 Nonresidential Use Matrix:

	PERMITTED USE	O-1 & O-1.5	O-2*	NC	C-1	C-2	C-3	D	L	I-1	I-2	ERZD	(LBCS Function)

Service	<u>Radio or Television Station Studio</u>	<u>P</u>	<u>P</u>			<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>S</u>	

Utilities	Radio or Television Station Without Transmission Tower					<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>		<u>P</u>	<i>4231</i>
Utilities	<u>Radio/Television Antenna , subject to §35-385(b)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>S</u>	
Utilities	<u>Radio/Television Antenna, unable to comply with §35-385(b)</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	

Definitions and Rules of Interpretation.

35-A101. Definitions and Rules of Interpretation.

(a) Generally.

Radio/Television Antenna (R/TV) Communication Use. Establishments furnishing point-to-point communication services either aurally, visually or by radio frequency, including radio or television broadcasting stations and the exchange or recording of messages. See also 35-385.



**Roderick Sanchez, AICP, C.B.O
Director**

6-5-12
Date