

City of Los Alamitos

Agenda Report Special Orders of the Day

April 20, 2009
Item No: 5A

To: Mayor Troy Edgar & Members of the City Council

From: Nita McKay, Interim City Manager

Subject: Consideration of Formation of New Non-Profit 501(c)(3) Corporation for Los Alamitos Television (LATV)

Summary: This report provides the City Council with an outline of the process involved to create a new nonprofit 501(c)(3) corporation for the control, operation and management of Los Alamitos Television (the "public access" portion of the City's public, educational and governmental programming authority), as well as issues concerning the creation of a second public or government access channel.

Recommendation:

1. Review the steps required to complete the formation of a 501(c)(3) corporation and the issues concerning the creation of a second public or government access channel, and;
2. Provide direction to staff as Council deems appropriate.

Background

At the February 17, 2009, City Council meeting, the Council discussed options related to the operation and management of Los Alamitos Television (the "public access" portion of the City's public, educational and governmental programming authority) and directed staff to return with a report with further information.

The Council is considering forming a new nonprofit 501(c)(3) corporation for Los Alamitos Television and appointing an independent board of interested and qualified residents for the oversight and management of the "public access" programming. Staff understands the Council would like the board to consist of local residents who are not members of the City Council, and would like the corporation to operate autonomously from the City. Staff also understands the Council would like to explore its options relating to "splitting" the channels, if possible.

Discussion

Channel Programming Issues

Channels like LATV are commonly known as “public access” channels, but are actually intended for any combination of public access, educational access, and government access, and are sometimes called “PEG” channels as a result. The City has the authority to decide how much (if any) of the LATV airtime will be devoted to public access programming, how much to educational programming, and how much to government programming. The City also has the authority to decide which time slots will be available for each kind of programming; though there must be a fair process for distributing the public access time amongst producers. The Council has previously adopted such a policy (Attachment 1).

This means the City has several options regarding programming PEG content. The City can continue to operate LATV3 as a combined channel, with public and government access programming on the same channel, as well as educational programming if the City wishes to devote airtime to it. This is a common model utilized by cities. The advantage of this option is that viewers need only remember a single channel for all community programming. The disadvantage is public, educational, and governmental programming competes with each other for the same time slots and in some cases “premium” time slots. The result is less airtime for each category of programming.

Another option is to operate multiple PEG channels. Under this model, one channel might be purely for public access and another channel for governmental access, or combined government and educational programming. This practice is also common. It has the advantage of providing considerably more airtime than a single channel, with the drawback that viewers have to remember two channels.

The City’s franchise agreement with Time Warner allows the City to receive up to three PEG channels, and the agreement with Verizon requires Verizon to match the number of channels Time Warner is providing. However, Time Warner and Verizon have the right to abandon their City-issued franchises and switch to a state-issued franchise. In which case, state law would allow Time Warner and Verizon to refuse to provide a second PEG channel unless there is 56 hours per week of non-duplicated locally produced programming on the existing LATV3 channel. If Time Warner and Verizon were to provide a second PEG channel, it could be revoked if less than 56 hours per week of non-duplicated local programming was being aired on the second channel.

The City would retain its authority over the LATV3 channel following the formation of a new non-profit corporation to operate LATV. The City Attorney’s office has advised because there may be First Amendment rights involved in public access programming, the new non-profit corporation would need to avoid exercising any editorial control over the content of public access programming, develop policies for allocating time slots that ensure all people interested in producing public access programming have an opportunity to do so, and would need to recognize the City’s ability to control which time slots are available for public access programming. As mentioned above, the City previously adopted such a policy that could be replicated by the new non-profit corporation (Attachment 1).

Formation of Non-profit Corporation

Staff has determined there is no process available to “unwind” the previous dissolution of Los Alamitos Television Corporation to reinstate the former corporation. However, based on the information provided by the Council regarding the desired management and formation structure, staff does not believe the time and cost estimates would vary greatly if such a reinstatement process were available.

The following steps will need to occur in order to complete the formation of a new nonprofit corporation in California and to obtain federal and state tax exemptions and other compliance matters:

1. Decide if the entire City Council will act as the Incorporator or authorize the City Attorney or Interim City Manager to act as the Incorporator; and,
2. Prepare the Articles of Incorporation and authorize the City Attorney to have them filed with the Secretary of State; and,
3. Determine who will sit on the Board of Directors and authorize the Incorporator to appoint initial Director(s). All of the activities and affairs of the Corporation will be managed by the Board. Staff understands the Board will be comprised solely of Los Alamitos residents who are not City Council Members. The Council can accomplish this task by appointing Directors as desired or establishing an application process for determining the initial Directors of the Board; and,
4. Draft Bylaws of the Corporation; and,
5. Have the Incorporator call the first meeting of the Board of Directors; and,
6. Prepare Waiver of Notice and Consent to Hold First Meeting of Directors; and,
7. At the First Meeting of the Board of Directors:
 - a) Accept resignation of the Incorporator; and
 - b) Approve Bylaws; and
 - c) Appoint officers; and
 - d) Conduct other corporate business.
8. Prepare minutes of the first meeting of the Board of Directors; and,
9. Within 60 days after filing of Articles of Incorporation, prepare Statement of Information and authorize City Attorney to have it filed with the Secretary of State; and,
10. Prepare and submit Application for Employer Tax Identification Number to the Internal Revenue Service; and,
11. Prepare and submit Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code; and,
12. Prepare and submit California State Tax Exemption Request to the Franchise Tax Board; and,
13. Take action to donate assets currently held for the benefit of Los Alamitos Television back to the newly formed nonprofit corporation. This can be done by a simple resolution; and,
14. Within 30 days of Los Alamitos Television receiving assets, complete and file Initial Registration Form with the Attorney General’s Office.

If the City requests the City Attorney handle both the nonprofit incorporation and the federal and state tax exemption and other compliance matters, the process typically takes about four to six months to complete and the time spent will be between 25-30 hours. City Attorney time can be reduced depending on the staff's involvement and assistance in completing and submitting the required documents listed above.

Additional Options for Los Alamitos Television

Staff will invite members of the community to present additional options to the City Council at the study session on April 20, 2009, for their consideration.

Fiscal Impact

The majority of the work can be completed by a paralegal with some attorney oversight and review. Staff estimates the fees and associated costs will be approximately \$3,000 to \$5,000. As stated above, the City can lower its legal costs associated with the formation by taking an active role in the preparation and filing of non-legal documents if the City Council desires.

Submitted & Approved By:

Nita McKay
Interim City Manager

*Attachments: 1) Los Alamitos Television Corporation Policies and Guidelines
2) Minutes of Special City Council Meeting – February 17, 2009
3) Agenda Report on Los Alamitos Television Discussion – February 17, 2009*