

**AN ORDINANCE BY
BY COUNCILMEMBER JIM MADDOX**

07-O-0987

**AS SUBSTITUTED BY
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE**

AN ORDINANCE TO AMEND THE CONTRACT RENEWAL AGREEMENT FOR THE CHASTAIN PARK AMPHITHEATER TO SET PERMANENT LIMITS ON SOUND LEVELS THAT MAY BE PRODUCED BY PERFORMERS; TO ESTABLISH PERMANENT PENALTIES FOR SOUND VIOLATIONS; TO MAKE PERMANENT THE UTILIZATION OF THE SPEAKER AND AMPLIFICATION SYSTEM RECOMMENDED BY AN AMPHITHEATER SOUND CONSULTANT IN 2001; TO AUTHORIZE AND DIRECT THAT A PORTION OF UNUSED TICKET-SURCHARGE MONEY COLLECTED FOR SOUND AND NOISE CONTROL ISSUES BE UTILIZED FOR AMPHITHEATER IMPROVEMENTS, AND A PORTION BE TRANSFERRED TO AN ACCOUNT WHOSE FUNDS ARE UTILIZED FOR REPAIR AND IMPROVEMENT OF CHASTAIN PARK; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") owns a public entertainment facility located in Chastain Park, known as the Chastain Park Amphitheater ("Amphitheater");

WHEREAS, the Amphitheater is a limited-use facility located adjacent to a residential neighborhood ("Neighborhood"); and

WHEREAS, the City entered a contract in 1990 with a joint venture called Chastain Ventures ("Venture"), whereby the Venture manages and operates the Amphitheater; and

WHEREAS, the Venture is made up of the Atlanta Symphony Orchestra and Concert/Southern Promotions; and

WHEREAS, the 1990 contract between the City and the Venture was renewed in 2001 in a contract called the Renewal Agreement for the Chastain Park Amphitheater ("Renewal Agreement"); and

WHEREAS, The Renewal Agreement recognized the need for a sound limit to be placed on the amount of sound that could emanate from the Amphitheater, but did not determine what the sound limit should be. Instead, the Renewal Agreement established an interim sound limit for the 2001 Season, and directed that a permanent sound limit be set for the remainder of the term, based upon studies throughout the 2001 Season by consultants and acoustical engineers; and

WHEREAS, prior to 2004, the City hired two different consultants to perform sound studies of the Chastain Amphitheater, but neither consultant produced a sound limit recommendation that was acceptable to both the Neighborhood and the Venture. As a result, the City continued to implement interim sound limits rather than a permanent sound limit; and

WHEREAS, the City passed a First Amendment to the Renewal Agreement that established an interim sound limit for the 2002 Season. The City also approved ordinance number 02-O-2107 in December 2002 that established an interim sound limit for the 2003 and 2004 Seasons; and

WHEREAS, in addition to setting interim sound limits, City ordinance number 02-O-2107 required that a new sound study be performed “to identify acceptable acoustical solutions (for the Amphitheater) that will produce sufficient internal sound levels while preventing an unacceptable sound level from escaping from the venue into the neighborhood”; and

WHEREAS, both the Neighborhood residents and the Venture participated in the development of the technical requirements for the Request for Proposals for the next sound study. The City contracted with Acentech Incorporated (“Acentech”), an acoustical consulting company based in Cambridge, Massachusetts, to perform a sound study at the Amphitheater during the 2004 Season; and

WHEREAS, Acentech’s sound study consisted of, among other things, measuring performance sound levels of approximately fifteen different performances in numerous different locations, including outside and in-home locations, and both inside and outside of the venue. The performances and locations monitored were all approved by the Neighborhood residents and the Venture prior to commencing any measurements. In late 2004, after completing its study, Acentech presented a set of recommended sound level limits for amplified concerts at the Amphitheater; and

WHEREAS, Acentech’s recommendations were based on their finding that the sounds that result in Neighborhood annoyance are primarily low-frequency sounds. Therefore, to narrowly tailor the sound level limits to the actual sounds causing disturbance, Acentech’s recommendations call for the measurement and regulation of only low-frequency sounds, and not sounds in the mid- and high-frequency range; and

WHEREAS, the amplitude of low-frequency sounds determined to be an annoyance to the Neighborhood can be quantified by sound level measurements made in the 63 Hertz (Hz) octave band, which encompasses only low-frequency sounds, and not sounds in the mid- and high-frequency range; and

WHEREAS, Acentech recommended a two-tiered sound level limit. Under this limit, acoustical measurements will be made at the light-tower booth at the rear of the Amphitheater. Artists are never permitted to produce sounds that, in any single one-

minute reading, exceed 95 dB in the 63 Hz octave band. In addition, during any given concert, artists will not be permitted to produce sounds that, in an accumulation of more than 10 individual one-minute readings, exceed 90 dB in the 63 Hz octave band; and

WHEREAS, Acentech's recommendations were adopted by the Atlanta City Council in ordinance number 05-O-0500 on April 18, 2005, and the ordinance was approved by the Mayor on April 26, 2005. Pursuant to this ordinance, the City implemented Acentech's recommended sound levels as interim sound limits, and applied those limits during the 2005 and 2006 Seasons. That ordinance did not establish a permanent sound limit; and

WHEREAS, after implementing Acentech's recommendations during the last two Seasons, the City now desires to make permanent the sound levels recommended by Acentech; and

WHEREAS, during previous Seasons where the Amphitheater sound levels have been interim levels only, the City has applied a reduced fine system for sound violations. Specifically, the reduced fine system charged \$100 for the first performance that violated the sound limits ("Violation Concert") each concert season, \$200 for the second Violation Concert each concert season, and \$300 for all subsequent Violation Concerts of the season; and

WHEREAS, beginning with the 2007 Season, the City will apply the Renewal Agreement's fine system associated with permanent sound levels, namely \$5,000 for the first Violation Concert, \$7,500 for the second Violation Concert, and \$10,000 for the third and subsequent Violation Concerts. The City desires to modify this fine system in two ways. First, the City will clarify that the \$5,000 fine shall apply to the first Violation Concert of *each Season* by a promoter, and that the \$7,500 fine shall apply to the second Violation Concert of *each Season* by such promoter. Second, the City wishes to amend the Renewal Agreement so that the maximum penalty is a \$100,000 fine rather than default of the Renewal Agreement. All fines, including this \$100,000 fine, will be deposited into the \$2.00 ticket surcharge dedicated trust fund ("\$2 Account), where the principal and earnings are expended solely for repairs and improvements to Chastain Park; and

WHEREAS, the Renewal Agreement establishes a \$1.00 ticket surcharge dedicated trust account ("\$1 Account") from which the City pays for sound-related costs, including costs associated with conducting Amphitheater sound studies, evaluating sound and noise control problems at the Amphitheater, and improving sound control systems at the venue. Given that the Second Amendment would make the sound limit permanent, the City does not anticipate engaging future sound studies, and therefore expects to have a surplus of unused funds in the \$1 Account. The City would like to allocate \$200,000 per year from the \$1 Account for sound-related expenses, would like to allocate up to \$200,000 additional dollars in the \$1 Account for Amphitheater improvements and maintenance, and would like to annually transfer any amount over \$400,000 into the \$2 Account to be utilized for repairs and improvements to Chastain Park; and

WHEREAS, the First Amendment to the Renewal Agreement established that, effective for the 2002 Season, the Venture would install a speaker and amplification system for the Facility consistent with the recommendations of a previous sound study, the cost of which will be drawn from the \$1 Account. The City and the Venture wish to utilize this system throughout the remainder of the term of the Renewal Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA AS FOLLOWS:

SECTION 1: The Renewal Agreement shall be amended ("Second Amendment") to set a permanent, two-tiered sound level limit, as follows: During each concert event, acoustical measurements will be made at the light-tower booth at the rear of the Amphitheater. These measurements will comprise a continuous sequence of one-minute LEQ levels in the 63-Hz octave band. During each concert event, the Venture partner that is presenting or promoting the event will not permit sound created by the concert performer(s) to result in any single one-minute reading that exceeds 95 dB, nor to result in an accumulation of more than 10 individual one-minute readings that exceed 90 dB.

SECTION 2: The Second Amendment shall provide that, beginning with the 2007 Season and continuing throughout the remainder of the term of the Renewal Agreement, the City will apply the Renewal Agreement's fine system for permanent sound levels, though the default provision set forth in that fine system shall be replaced with a \$100,000 fine. Specifically, the fine system shall be as follows:

- (A) For the promoter of the Violation Concert's ("Offending Party") first Violation Concert in any Season, the fine imposed on the Offending Party shall be \$5,000, except as described in (D) below.
- (B) For an Offending Party's second Violation Concert in any Season, the fine imposed on the Offending Party shall be \$7,500, except as described in (D) below.
- (C) For an Offending Party's third Violation Concert in any Season, the fine imposed on the Offending Party shall be \$10,000, except as described in (D) below.
- (D) For an Offending Party's fourth and any subsequent Violation Concert in any Season, the fine imposed on the Offending Party shall be \$100,000 per Violation Concert. Where an Offending Party has been assessed a \$100,000 fine pursuant to this subsection, the fine for the first, second and third Violation Concerts by that Offending Party in each subsequent Season shall be \$10,000 each.

SECTION 3: The Second Amendment shall provide that the Venture will have responsibility for communicating to its sublessee(s) the new sound limits and fine system that are established by the Second Amendment. Where a sublessee violates the sound limit, the Venture must make commercially reasonable efforts to collect the established

fine from the sublessee and remit the fine to the City. The Second Amendment shall require that, subsequent to the 2007 Post-Season, the Venture shall not permit any sublessee to promote any event at the Amphitheater unless their sublease includes a requirement that the sublessee abide by the new sound limits, and pay any and all fines imposed by the City as a result of sublessee's violation of the sound limits. Failure of the sublessee to timely pay fines must be deemed a default of the sublease, the consequence of which may be termination.

SECTION 4: The Second Amendment shall provide that the fines collected, as described in Section 2 of this Ordinance, shall be deposited into the \$2.00 surcharge dedicated fund described in the Renewal Agreement, where the principal and earnings are expended solely for repairs and improvements to Chastain Park. Specifically, said funds shall be deposited into Fund, Account and Center number 3P02 444108 N41S0613QNA0, Chastain Park Amphitheater Surcharge.

SECTION 5: The Second Amendment shall implement, for the remainder of the Term of the Renewal Agreement, the directive of the First Amendment regarding the speaker and amplification system utilized in the Amphitheater. Specifically, the Second Amendment shall provide that prior to the commencement of each Pre-Season, the Venture will install a speaker and amplification system for the Amphitheater consistent with the recommendations of the Newcomb & Boyd Special Technologies Group contained in its Sound Study Report for Chastain Amphitheater dated November 26, 2001. The cost of such speaker and amplification system shall be paid from the \$1 Account in accordance with past practices. The Venture shall require its sublessee(s) and performers to use said speaker and amplification system as the exclusive such system in all performances at the Amphitheater.

SECTION 6: The Second Amendment shall respond to the anticipated surplus in the \$1 Account by transferring certain surplus dollars to the \$2 Account, and by increasing the permissible uses of the \$1 Account proceeds. Specifically, the Second Amendment shall provide that:

- 1) At the end of each concert season, after the City has calculated all income received by the \$1 Account for that season, and after the City has paid all sound-related costs for that season, the City shall transfer any amounts remaining in the \$1 Account in excess of \$400,000.00 to the \$2.00 Account. Said transfer, if any, shall occur annually.
- 2) Of the funds remaining in the \$1.00 Account, \$200,000 will be allocated for, and may be expended for sound-related expenses, consistent with the City's practices to date. Said expenditures shall be determined by both the City and the Venture, in consultation with each other. The additional funds in the \$1 Account, not to exceed \$200,000, will be allocated for Amphitheater improvements and maintenance, including without limitation those improvements and maintenance that are the responsibility of the City under the Renewal Agreement, and sound-related

improvements and maintenance if necessary. The City and the Venture shall jointly determine the projects on which the funds available for Amphitheater improvement and maintenance may be expended, and the total amount to be expended on each project.

SECTION 7: The transfers from the \$1 Account to the \$2 Account that are described in Section 6 (1) of this Ordinance, shall be withdrawn from fund, account and center number 3P02 724001 N41S0622QNA0, Chastain Park Amphitheater Sound Control, and deposited into fund account and center number 3P02 444108 N41S0613QNA0, Chastain Park Amphitheater Surcharge. This legislation fully authorizes such transfers and no additional legislation shall be required for such transfers to be made.

SECTION 8: The permitted expenditures from the \$1 Account shall be increased. Specifically, revenue deposited into fund, account and center number 3P02 724001 N41S0622QNA0, Chastain Park Amphitheater Sound Control, may be used for sound-related expenses arising at the Chastain Park Amphitheater as well as for Chastain Amphitheater improvement and maintenance expenses.

SECTION 9: The City Attorney is hereby directed to prepare the Second Amendment for execution by the Mayor, to be approved as to form by the City Attorney or her designee.

SECTION 10: The Second Amendment shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder, until the same has been signed by the Mayor and delivered to the Venture.

SECTION 11: All ordinances and parts of ordinances in conflict herewith are hereby waived for purposes of the Ordinance only, and only to the extent of the conflict.