

City of Piedmont  
Council Agenda Report

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DATE: March 19, 2007

FROM: George Peyton, City Attorney

SUBJECT: **License Agreement with ASCAP**

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RECOMMENDATION:

Approve the attached License Agreement between ASCAP and the City relating to public performances of musical compositions.

BACKGROUND:

ASCAP (American Society of Composers, Authors, and Publishers) has been persistently requesting for a number of months that Piedmont sign the attached License Agreement that ASCAP has developed for Local Government Entities such as the City of Piedmont.

COST TO PIEDMONT:

The current annual Base License Fee as shown in the Agreement that would apply to Piedmont is \$284.00. This fee would be adjusted annually based on the Consumer Price Index – All Urban Consumers. There is a separate fee for Special Events of 1% of Gross Revenue, but based on the current information provided by Mark Delventhal, the City does not charge for any musical performances that it sponsors, so this should not be a factor.

LEGAL ANALYSIS:

I was asked to review various legal questions, with the most important question being whether Piedmont was legally required to pay a license fee to ASCAP due to musical events that the City sponsors. A copy of a letter dated January 12, 2007, from ASCAP explaining the basic copyright law, is attached for your information. Because the City does not collect revenues or have ticket sales for musical performances, I raised the question of how ASCAP has the right to charge any fee when Piedmont receives no revenues from and does not “profit” from any such sponsored musical performances. I dealt directly with Samuel Mosenkis, the Director of Legal Affairs for ASCAP, and a copy of his letter to me responding to this question is attached for reference.

Various other legal questions were raised with Mr. Mosenkis, but when I was recently informed that the City actually pays for at least one musical performance each year, namely the July 4<sup>th</sup> Concert in the Park, it became clear that the City should execute the

License Agreement. Incidentally, I did ask a private attorney who specializes in trademark, copyright, and patent law whether Piedmont was required to pay license or similar fees based on our fact situation, just to make sure I was not missing some legal aspect that a specialist would know, and I was assured that such fees were legally required.



## LOCAL GOVERNMENT ENTITIES

### 2007 Rate Schedule and Report Form

#### SCHEDULE A: Base License Fee

Population Size			Base License Fee
1	to	50,000	\$284.00
50,001	to	75,000	\$567.00
75,001	to	100,000	\$681.00
100,001	to	125,000	\$909.00
125,001	to	150,000	\$1,136.00
150,001	to	200,000	\$1,476.00
200,001	to	250,000	\$1,816.00
250,001	to	300,000	\$2,158.00
300,001	to	350,000	\$2,499.00
350,001	to	400,000	\$2,840.00
400,001	to	450,000	\$3,180.00
450,001	to	500,000	\$3,521.00
500,001	and over		*** \$4,315.00

\*\*\* \$4,315 plus \$500 for each 100,000 of population above 500,000 to a maximum fee of \$56,781

#### SCHEDULE B: Special Events

The rate for Special Events shall be 1% of Gross Revenue.

"Special Events" means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" of such Special Event exceeds \$25,000.

"Gross Revenue" means all monies received by LICENSEE or on LICENSEE'S behalf from the sale of tickets for each Special Event. If there are no monies from the sale of tickets, "Gross Revenue" shall mean contributions from sponsors or other payments received by LICENSEE for each Special Event.

#### SCHEDULE C: State Municipal and/or County Leagues or State Associations of Attorneys

The annual license fee for LICENSEES who are legally organized as state municipal and/or county leagues or state associations of municipal and/or county attorneys shall be \$284.

#### License Fee for Year 2008 and Thereafter

For each calendar year commencing 2008, all dollar figures set forth in Schedules A, B and C above (except for \$500 add-on for populations of 500,001 or more) shall be the license fee for the preceding calendar year, adjusted in accordance with the increase in the Consumer Price Index - All Urban Consumers (CPI-U) between the preceding October and the next preceding October. Any additional license fees due resulting from the CPI adjustment shall be payable upon billing by ASCAP.

ASCAP, 2690 Cumberland Parkway, Suite 490, Atlanta GA 30339-3913 1-800-505-4052 770-805-3475 (FAX)  
 Epayment Websites: [http://www.ascap.com/gls\\_web](http://www.ascap.com/gls_web) or <http://www.ascap.com>

