

RESOLUTION NO. 6-14-05-01

**A RESOLUTION OF THE CARMEL/CLAY BOARD OF PARKS AND RECREATION
REGARDING THE PROTECTION OF REAL PROPERTY**

WHEREAS, the Carmel/Clay Board of Parks and Recreation (the "Park Board") is a governmental entity created and authorized to administer the Carmel/Clay Park and Recreation Department (the "Department") pursuant to that certain agreement entitled "Interlocal Cooperation Agreement" signed by the respective authorized officials of Clay Township, Hamilton County, Indiana and City of Carmel, Indiana on July 30, 2002 and effective January 1, 2003, as amended from time to time; and

WHEREAS, the Interlocal Cooperation Agreement and Indiana Code Section 36-10-3 grants the Park Board authority to establish rules governing the use of park and recreation facilities by the public; and

WHEREAS, the Park Board, as set forth in the Interlocal Cooperation Agreement and Indiana Code Section 36-10-3, is authorized to invoke any legal, equitable or special remedy for the enforcement of any policy approved by the Park Board; and

WHEREAS, the Park Board serves as trustee of parkland for the benefit of the entire Carmel/Clay community; and

WHEREAS, the Park Board has determined that it is in the best interests of the Carmel/Clay community to establish a policy to help protect the safety and comfortable enjoyment of all park users from unauthorized encroachments upon park property.

NOW, THEREFORE, BE IT RESOLVED that the Carmel/Clay Board of Parks and Recreation hereby adopts the Unauthorized Encroachments on Park Property Policy (Adjoining Landowners) attached hereto as Exhibit "A".

APPROVED AND ADOPTED this 14th day of June 2005.

CARMEL/CLAY BOARD OF PARKS AND RECREATION

Susannah H. Dillon
Susannah H. Dillon

James Engledow
James Engledow

Dan Dutcher

Tim Tolson
Tim Tolson

Joe Miller

ATTEST: Tim Tolson, Secretary
Tim Tolson

James Rosensteele
James Rosensteele

Sally Shapiro
Sally Shapiro

Patricia Chester

Joan B. Ketterman
Joan B. Ketterman

Unauthorized Encroachments on Park Property

- 1) Except as otherwise specifically authorized in writing by the appropriate entity, no adjoining property owner, occupant, manager, or person in actual control of real property adjoining property owned or managed by the Carmel/Clay Board of Parks and Recreation (the "Board") may within park property:
 - a) construct, place or maintain any fences, rocks, boulders soil, yard waste or other physical elements and structures; or
 - b) construct roadways, finished pathways or trails; or
 - c) plant or maintain any trees or vegetation of any kind; or
 - d) remove or cause harm to any existing trees or vegetation of any kind; or
 - e) remove any existing fences, rocks, boulders, soil or other physical elements and structures; or
 - f) impede, obstruct or interfere with the intended use of parkland and/or comfortable enjoyment of park visitors.
- 2) If the Board, or an authorized representative of the Board, believes that a property owner, occupant, manager, or person in actual control of adjoining property is in violation of any of the provisions set forth in Section 1 of this policy, the Board or its designee shall give the person or persons written notice specifying the nature of the violations, the corrective action that must be taken, and a reasonable time to complete the corrective action. This notice may be given by regular mail with proof of mailing, registered or certified mail, or by personal delivery.
- 3) If corrective action is not completed within the timeframe specified in the notice, or any agreed extensions, the Board may:
 - a) with respect to the property owned or managed by the Board, take whatever corrective action is necessary to cure any violations. The person or persons to whom notice to correct was given pursuant to Section 2 of this policy shall be jointly and severally liable for all costs and expenses incurred by the Board for the corrective action, plus interest, costs, and reasonable attorney's fees to the extent allowed under Indiana law; or
 - b) seek injunctive relief compelling the person or persons to whom notice was given to take corrective action. If the Board is the prevailing party in any such action, the Board shall also seek to recover its costs and reasonable attorney's fees to the extent allowed under Indiana law.

- 4) In the event an encroachment, as identified in Section 1 of this policy, poses an imminent risk to the safety and/or comfortable enjoyment of park users, the Board may remove, prevent, or terminate an encroachment onto park property or easement without prior notification to the violating person or persons. The Board shall give the person or persons written notice within seven (7) days after corrective action is taken specifying the nature of the violations. This notice may be given by regular mail with proof of mailing, registered or certified mail, or by personal delivery. The person or persons to whom notice was given shall be jointly and severally liable for all costs and expenses incurred by the Board for the corrective action, plus interest, costs, and reasonable attorney's fees to the extent allowed under Indiana law.