



# City of Panama City Beach

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**FEB 10 2021**

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THE CITY CLERK

3:35pm  
*[Signature]*

February 10, 2021

To: Mayor and City Council

From: City Manager Tony O'Rourke

*[Signature: Tony O'Rourke]*

Re: Popeye Park

The following memorializes my discussion with the Mayor yesterday regarding Popeye Park. I fully disclosed to the Mayor my complaint concerning suspected acts of gross mismanagement, gross waste of public funds and breach of duty committed by employees, officers, agents, or independent contractors of the City of Panama City Beach.

As you are aware, I informed you in July and August of 2020 that Popeye Park received over \$50,000 in playground, parking, picnic pavilion and landscape improvements between March and October 2019. Popeye Park is a private and not City-owned property.

For the past several decades, the City mistakenly believed that the lot known as Popeye Park was City property and consequently maintained the lot. However, Public Works Director Kelly Jenkins informed both the City Manager, Parks and Recreation Director, and City Attorney in late May or early June of 2019 the lot was in fact private property. The City Attorneys' billing receipts attached confirm validation of the private title status of Popeye Park on June 4, 2019. Despite this validation, the City continued to make improvements to Popeye Park until the project was completed in October 2019 at a cost in excess of \$50,000.

The Popeye Park improvements were never specifically budgeted or approved by the City Council in the FY 2018-19 budget. Despite that, City Manager, Mario Gisbert, instructed Parks and Recreation Director Jim Ponek to find money to develop the park per "City Council direction." There is no evidence of the City Council approving this project in the FY 2018-19 budget or during any regular Council meeting. In fact, Jim Ponek reported to Mario on November 16, 2018, "I will keep all purchases under \$10,000 so no items need to go to City Council." Rather, staff repeatedly reported the impetus for the Popeye Park project improvements came from then Mayor Mike Thomas. Individual Council members have no legal authority to direct such an action, except with

City Council approval, which there was none. Further compounding my concerns, the residential property adjacent to Popeye Park is the home of Mayor Thomas' son.

I believe there was a failure of the officers of the City to inform the City Council of this matter after June 4, 2019, which compounded this gross mismanagement of public funds to improve private property. I believe, the officers of the City, having knowledge of the private property status of Popeye Park on June 4, 2019, and the significant public resources being spent there, had a duty to inform the City Council of actions by officers, employees or persons associated with the City organization were engaged in actions that violated the legal obligation to the City or violated the law likely to result in substantial financial injury to the City. To my knowledge, no referral of this matter was made to the highest authority of the City, the City Council.

Now, as you are aware, effective January 4, 2021, the FBI is investigating the Popeye Park project and those involved in its development. I believe it is problematic for the City Attorneys' office to simultaneously serve as an advocate and legal counsel to City employees subject to the FBI investigation, while also being a material witness and subject in this investigation itself. I believe this dual role is an inherent conflict of interest.

#### **Recommended Course of Action**

To that end I strongly recommended to the Mayor and the City Council that an independent entity be hired to investigate the Popeye Park matter concerning suspected violations of federal, state, or local law and suspected acts of gross mismanagement which has a substantial adverse economic impact on the City of Panama City Beach. I appreciate the Mayor understanding the gravity of this matter and immediately pursuing a proper course of action. The City needs to demonstrate a proactive, transparent, and accountable position in this matter.