



# City of Panama City Beach

February 11, 2021

To: Mayor and City Council

From: City Manager Tony O'Rourke

A handwritten signature in black ink, appearing to read "Tony O'Rourke", is written over the "From:" line.

Re: Popeye Park

**RECEIVED**

**FEB 11 2021**

IN OFFICE OF  
**THE CITY CLERK**

3:04pm

A handwritten signature in blue ink, appearing to read "Lynne Fasone", is written below the "IN OFFICE OF THE CITY CLERK" stamp.

The following is a written complaint under the Florida Public Whistleblowers Act (Florida Statutes Section 112.3187) concerning an act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds and gross neglect of duty committed by an officer, employee, agent, or independent contractor 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. I shared these concerns with you again in writing on February 10, 2021.

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 Mario Gisbert and City Attorney Amy Myers on or about April 26, 2019 that the lot was in fact private property. The City Attorneys' billing receipts further 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, 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. Coincidentally, the residential property adjacent to Popeye Park is the home of Mayor Thomas' son.

Compounding this gross mismanagement of public funds to improve private property is the failed duty of the City Attorney to inform the City Council of this matter after April 29, 2019 or June 4, 2019. Under Chapter 4 of Florida's Rules of Professional Conduct, Rule 4-1.13, the City Attorney, 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. No referral of this matter was made to the highest authority of the City, the City Council.

Finally, as you are aware, the conduct of the City is under review by law enforcement. I believe it is problematic for the City Attorneys' office to simultaneously serve as an advocate and legal counsel to City employees, while also being a participant in some of the conduct under review. I believe this dual role is an inherent conflict of interest.