

## COUNCIL MINUTES

### REGULAR MEETING

December 6, 2011

A Regular Meeting of the City Council of the City of Jacksonville was held Tuesday, December 6, 2011 beginning at 7:00 PM in the Council Chambers of City Hall. Present were: Mayor Sammy Phillips presiding; Mayor Pro-Tem Michael Lazzara and Council Members: Jerry Bittner, Randy Thomas, Bob Warden, Angelia Washington and Jerome Willingham. Also present were: Richard Woodruff, City Manager; Ronald Massey, Assistant City Manager, Gayle Maides, Interim Finance Director; Glenn Hargett, Communications and Community Affairs Director; Mike Yaniero, Police Chief; Rick McIntyre, Fire Chief; Tim Chesnutt, Recreation and Parks Director; Grant Sparks, Public Services Director; Reggie Goodson, Planning and Development Services Director; Carmen Miracle, City Clerk; and John Carter, City Attorney. \*An audio recording of the Council Meeting is presently available for review in the City Clerk's Office.

#### CALL TO ORDER

Mayor Sammy Phillips called the meeting to order at 7:00 PM.

#### PLEDGE OF ALLEGIANCE

Councilwoman Washington led the Pledge of Allegiance.

#### INVOCATION

Mr. John Carter pronounced the invocation.

#### ADOPTION OF AGENDA AND CONSENT ITEMS

A motion was made by Mayor Pro-Tem Lazzara, seconded by Councilman Thomas, and unanimously approved to adopt the agenda as amended to include a revised Ordinance and map for Item #2 – Voluntary Annexation Petition – HPS&R and Jacksonville Hotel, Inc. – 10.21 Acres – Western Blvd., an updated Consent Item #9 – Bid Award – Freedom Fountain, and a Closed Session added for discussion of the Spano vs. City litigation, and the property acquisition between Old Bridge St., Highway 17 and the New River as previously discussed by Council, pursuant to General Statute 143-318.11.

ADOPTION OF MINUTES

A motion was made by Mayor Pro-Tem Lazzara, seconded by Councilwoman Washington, and unanimously adopted to approve the minutes of a Special Workshop Meeting held November 22, 2011 as presented and the minutes of the Regular Meeting held November 22, 2011 as presented.

PRESENTATIONSRIVER OF LIFE CHURCH – PRESENTATION OF DONATION TO CITY

Pastor Chris Phillips and members of the River of Life Church presented the City with an \$8,000 donation to assist the Police Department in purchasing defibrillator units for the squad cars for the first responders. Mayor Phillips thanked the Pastor and members of the congregation for their continued generosity and presented the River of Life Church with a Certificate of Recognition for their dedication and support to the safety of Jacksonville and its citizens.

RECOGNITION OF GRANT SPARKS, PUBLIC SERVICES DIRECTOR

Mayor Phillips presented Grant Sparks, Public Services Director, with a plaque recognizing his leadership and service to the City and its citizens for the past 11 years. Mr. Woodruff thanked Mr. Spark's wife for sharing him with the City and thanked Mr. Spark's for the past 18 months that he had worked with him and the example he set. The Public Services Department Heads also expressed their thanks for having worked with Mr. Sparks.

OATHS OF OFFICE – POLICE DEPARTMENT – LIEUTENANT TERESA WHITE AND SERGEANT MARC HOLDEN

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Mayor Phillips reviewed the qualifications and past law enforcement service for Lieutenant Teresa White and Sergeant Marc Holden. Mayor Phillips administered the Oath of Office to Lieutenant White while her husband Brandon held the Bible and her children Raven, Shae, Christian and Brenden looked on. Her husband then pinned on the Lieutenant badge and rank insignia. Mayor Phillips then administered the Oath of Office to Sergeant Holden while his wife Shannon and sons Cody, Damian and Nicholas held the Bible. His wife pinned on the Sergeant badge and the rank insignia. Chief Yaniero congratulated both Lieutenant White and Sergeant Holden.

REPORT TO COUNCIL – WATER AND SEWER ADVISORY BOARD

Mr. Jim Dorn provided a brief report on the annual activities, accomplishments and goals of the Advisory Board. Councilman Randy Thomas is the Council Liaison to the Board.

RECESS/RECONVENE

Mayor Phillips recessed the meeting at 7:32 PM for a short break. Mayor Phillips reconvened the meeting at 7:35 PM.

PUBLIC HEARINGS

REZONING - ADULT ESTABLISHMENT OVERLAY AMENDMENT –  
235 & 201 WILMINGTON HWY & 118 BROADHURST RD

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Mary Sertell, Senior Planner stated that Carl Beacham and Ken Morgan submitted a request to amend the existing Adult Establishment Overlay to remove approximately thirteen acres from the south side of Wilmington Highway. If approved, these parcels would no longer be within the Adult Establishment Overlay; therefore, adult businesses would not be permitted within these areas. The subject sites were located at 235 & 201 Wilmington Highway and 118 Broadhurst Road.

Councilman Willingham asked John Carter, City Attorney, what were the legal ramifications of reducing the overlay zone. Mr. Carter stated he didn't think there were any legal ramifications for this small area. Since two of the property owners were making the request and not the City, he did not see it being challenged. With the proximity to the present day gentlemen's club and Beacham Apartments, an adult establishment could not be opened up on the sites.

Mayor Phillips recessed the regular meeting at 7:40 PM in order to convene the Public Hearing.

With no one else desiring to speak, Mayor Phillips closed the Public Hearing at 7:41 PM and reconvened the regular meeting.

A motion was made by Councilman Bittner, seconded by Councilman Willingham, and unanimously adopted to approve the rezoning request based on Findings of Facts A, B, C, and D being found in the affirmative.

Ordinance 2011-71, Pg. 555, Bk. 10

VOLUNTARY ANNEXATION PETITION – HPS&R AND JACKSONVILLE HOTEL,  
INC. – 10.21-ACRES – WESTERN BLVD.

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Ron Massey, Assistant City Manager, stated that Council was given an updated Ordinance and map. The area had been increased by approximately 0.8 acres, for a total consideration of 11.02 acres. On behalf of HPS&R, Inc. and Jacksonville Hotel, Inc., John Pierce and Associates submitted a voluntary annexation petition for annexation of three tracts

that were contiguous to the current City limit boundaries. The tracts were located adjacent to Western Blvd at its intersection with Henderson Drive Extension. The property was currently proposed as the future site for three commercial businesses: 1) 73,109 square feet Courtyard by Marriot hotel with 112 rooms and conference meeting space; 2) Car Wash, and 3) Restaurant. The financial analysis showed a positive net case flow over the five year review period of approximately \$600,000.

Mayor Phillips recessed the regular meeting at 7:43 PM in order to convene the Public Hearing.

With no one desiring to speak, Mayor Phillips closed the Public Hearing at 7:44 PM and reconvened the regular meeting.

A motion was made by Councilman Thomas, seconded by Councilman Warden, and unanimously approved to adopt the Annexation Ordinance as presented.

Ordinance 2011-72, Pg. 559, Bk. 10

VOLUNTARY ANNEXATION PETITION – NEW BEGINNINGS CHILD CARE  
CENTER-3.10 ACRES – 200 TERRY LEE LANIER DRIVE–CAROLINA FOREST

Mr. Massey stated that NBI Financial III, LLC (New Beginnings Child Care Center) submitted a voluntary annexation petition for 3.10 acres that was contiguous to the current City limit boundaries.

The property was located adjacent to Carolina Forest Blvd at its intersection with Terry Lee Lanier Drive. The property was the site of a 14,533 square feet childcare facility, which had been issued a 90 day certificate of occupancy. A site plan for the facility was approved October 22, 2010, with driveway access only on Terry Lee Lanier Drive. The facility was paying outside City water and sewer rates until the property was annexed into the City. The financial analysis showed a positive net case flow over the five year review period of approximately \$47,000.

In response to a question by Councilman Thomas, Mr. Massey stated that when the building permit was issued, it was not adequately checked to see if the property was in the City limits. The intent of the property owner was to be in the City limits. Mr. Woodruff stated that all the land around the property had been annexed, so everyone assumed it was in the City. Processes have been modified to avoid this happening in the future.

Mayor Phillips recessed the regular meeting at 7:46 PM in order to convene the Public Hearing.

With no one else desiring to speak, Mayor Phillips closed the Public Hearing at 7:47 PM and reconvened the regular meeting.

A motion was made by Councilman Warden, seconded by Councilman Bittner, and unanimously approved to adopt the Annexation Ordinance as presented.

Ordinance 2011-73, Pg 561, Bk. 10

SPECIAL USE PERMIT AND SITE PLAN – CITY OF JACKSONVILLE CENTER  
FOR PUBLIC SAFETY – CORNER OF MARINE BLVD AND COURT ST

Mayor Phillips recessed the regular meeting at 7:48 PM in order to convene the Public Hearing.

Mayor Phillips swore in Ryan King, Planning Administrator. Mr. King stated the City of Jacksonville submitted a Special Use Permit and Site Plan application for a proposed 103,231 square foot Public Safety - Police Station and Fire Facility. The 6.49 acre development site was located at the southeast corner of Marine Boulevard and Court Street within the City limits. The property was zoned Office/Mixed Use (O/MU) and within this district Police Stations and Fire Facilities were a permitted use; however, due to the type of alternative bufferyard design, staff was requesting City Council authorize the deviation through a public hearing in case the residents affected had any issues.

Mayor Phillips asked about stormwater retention. Mr. King stated that the facilities would be underground and there would not be any stormwater retention ponds as previously presented to Council.

Councilman Warden asked about the previously presented retail buildings that were going to be placed along Court Street. Mr. Woodruff stated the space would be reserved and used as parking until City Council authorized it to be converted into some type of office or retail space. No physical structures would be built in that area at this time.

Mayor Phillips swore in Richard Woodruff, City Manager. Mr. Woodruff stated he represented the applicant for the petition. The matter had gone before the Planning Advisory Board and concern came up regarding the impact the facility may have upon the church. He stated that he and Mr. Massey met with representatives of the church regarding their concerns and that they would be working with the church on any issues especially regarding fencing and parking.

Discussion followed on traffic considerations and parking in the area.

Cindy Wheeler, 305 Estate Drive, Jacksonville, stated she was a volunteer at the Red Cross Office and was aware of parking issues along Ruth Street. If parking was going to be cut down to one side of the street, would the parking sites at the complex be open to the public. Mr. Woodruff stated that on-street parking should improve since staff would now have places to park at the complex, but there would be spaces available for the public.

With no one else desiring to speak, Mayor Phillips closed the Public Hearing at 8:09 PM and reconvened the regular meeting.

A motion was made by Councilman Warden, seconded by Mayor Pro-Tem Lazzara, and unanimously approved the Special Use Permit and Site Plan based on findings of fact A through G being found in the affirmative with conditions identified within the Staff Report.

#### PUBLIC COMMENT

Kevin O'Conner, 210 Newport Drive, congratulated the newly elected officials and the police officers who received promotions. He stated his concerns about the timing of the signals at Williamsburg Parkway and the lack of crosswalks across Western Blvd.

Mr. Woodruff stated NCDOT was currently working at Country Club and Western to install pedestrian crossings. Crosswalks were also being planned for Western and Highway 17. There was no question that many more improvements were needed. Mayor Pro Tem Lazzara added that Mr. O'Conner was accurate in his comment on the timing of the lights. There were issues all across the City on the longevity of the lights and when they switched. There would be corrective action with the lights when the ITS system was fully deployed.

#### NEW BUSINESS

##### CONSENT ITEMS

##### SITE PLAN WITH APPROVED CONDITIONAL/SPECIAL USE PERMIT – JACKSONVILLE COMMONS PARK – 100 RECREATION LOOP

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Parker and Associates on behalf of the City of Jacksonville was seeking approval of a Site Plan with an approved Conditional/Special Use Permit for a proposed 1,280 square foot expansion to the Jacksonville Commons Park facilities. The expansion included a 1,110 square foot detached maintenance building for the Recreation Center and a 170 square foot addition to the concession stand adjacent to Commons Drive South.

Council approved the Site Plan with the approved Conditional/Special Use Permit without conditions.

AUTHORIZATION TO CONDEMN FINANCIAL GUARANTEES

As directed by Council, staff requested authorization to process condemnation of the expiring financial guarantees held by the City if the developer was unable or unwilling to extend the Surety Agreement: Maynard Manor, Phase VI-C and Western Parkway Subdivision.

Council authorized staff to process condemnation of the financial guarantees if the developer was unwilling or unable to extend the Surety Agreement.

TAX RELEASES, REFUNDS, AND WRITE-OFFS

The County/City Tax Collector and the City's Finance Director recommended releases, refunds, and write-offs of property taxes. The detailed list of these tax releases and refunds (that is, the listing by property name, amount, reason, etc.) was available in the Finance Office for review. The tax releases, refunds, and write-offs as recommended by the City/County Tax Collector totaled, respectively, \$17,041.85, \$2,698.04, and \$81.25 (\$19,821.14).

Council approved the tax releases, refunds and write-offs.

RESOLUTION DONATING SURPLUS WATER SUPPLY VEHICLE TO  
NON-PROFIT ORGANIZATION – STURGEON CITY OF JACKSONVILLE, INC.

The City of Jacksonville wanted to donate one vehicle – a 2000 Ford F150 Regular Cab pick up truck to Sturgeon City, a non-profit 501c3 corporation. The Kelley Blue Book value for the vehicle was approximately \$3,440. North Carolina General Statute 160A-280 allows that a city may donate, upon such terms and conditions, as it deems wise, with or without consideration, to sell or exchange, any real or personal property that it may own, to any other governmental unit or nonprofit, by approval of the Council. The notice required under this General Statute was posted.

Council adopted the Resolution declaring this vehicle surplus and authorizing the donation of this vehicle to Sturgeon City.

Resolution 2011-33, Pg. 413, Bk. 6

BID AWARD – FREEDOM FOUNTAIN CONSTRUCTION PROJECT

The Council unanimously endorsed a design that featured a disappearing edge fountain basin framed by a curved wall with arches that could later feature statues representing the five armed services. Flags and fountain jets representing federal, state and local governments would be featured as well as arched water jets to represent each of the fifty states. Three bids were received and opened on December 1, 2011. The low bidder for both the Base Bid and Add

Alternate was D.S. Simmons, of Goldsboro, NC, in the total contract amount of \$584,496.60. Staff requested an additional \$58,000 (approximately 10% of the total construction cost) as a contingency to cover any unforeseen circumstances that may arise during construction.

Staff recommended award of this project to D.S. Simmons, of Goldsboro, NC based upon their review of the bids.

Council awarded the bid to D.S. Simmons, including the Add Alternate, and approved a 10% contingency with the Budget Amendment.

Ordinance 2011-74, Pg. 563, Bk. 10

### NON-CONSENT ITEMS

#### AUDITOR'S REPORT ON THE CITY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) FOR FY 2011

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Using the PowerPoint presentation attached to the official minutes as Exhibit A, James Sargeant from McGladrey & Pullen, LLP, presented the Auditor's Report for the City's Comprehensive Annual Financial Report (CAFR) for fiscal year 2011. The City received an unqualified opinion which was the highest level of assurance not only on its financial statements, but for its major Federal and State programs. Council members received copies of the CAFR at the November 22 meeting. A copy of the CAFR was available for public review on the City website as well as in the City Clerk's Office.

Mr. Woodruff asked if any member of the management or City government influenced in any way the findings of the auditors. Mr. Sargeant stated absolutely not.

A motion was made by Mayor Pro-Tem Lazzara, seconded by Councilman Willingham, and unanimously approved the Comprehensive Annual Financial Report for FY 2011 as presented.

### PUBLIC COMMENT

There was no one present desiring to speak at this public comment section.

### REPORTS

#### ASSISTANT TO REGIONAL DIRECTOR

Councilman Willingham reported that he was elected to the Board of Directors as an Assistant to the Regional Director for North Carolina for the National Black Caucus of Local Elected Officials.

### TRAFFIC LIGHTS

Councilman Bittner reported that Public Transportation has changed the traffic light timing at the intersection of Piney Green and Country Club. Currently only two cars can make a left turn onto Piney Green before the light changes. Mr. Woodruff stated he would pass that information on.

### CROSSWALKS

Councilman Warden stated that we needed to be more aware of pedestrian safety. He commented on the crosswalk area across Henderson at Jacksonville High School. Even though it was marked, there was an issue in that area.

### CAFR REPORT

Councilman Thomas stated that it was reassuring to read in the CAFR that the General Fund came in 13% below the budgeted amount on actual expenditures last year.

### PRAYERS FOR FISHER FAMILY

Councilwoman Washington asked that everyone keep the family of Jacinta Fisher in their prayers. She was a 2010 White Oak High School graduate and had been a student of hers. Ms. Fisher unfortunately lost her life in an accident caused by a drunk driver.

### AUTOMATED SIDE LOADING REFUSE TRUCK

Mr. Woodruff stated that when the side loading refuse truck bid was awarded, the low bidder did not receive our order. They no longer manufacture the 2011 truck and the cost of the 2012 truck will be \$4, 551 higher; however, with this increase, the total amount of \$234, 518 was still the low bid. Unless negative feedback was received from Council, the order would be placed. Council indicated that they did not have a problem with placing the order.

### CITY COUNCIL MEETINGS

The City Council will not have any additional Council meetings this month. The next City Council regular meeting was scheduled for January 3, 2012.

### HOLIDAY SCHEDULE CHANGES

Mr. Woodruff stated that notification would be sent out to customers regarding the change of sanitation pickup days for the holidays. The Sanitation Department had different days off than City Hall.

LEGAL CASES

Mr. Carter stated that he represented the City and the Board of Adjustment yesterday in Superior Court on Avila vs. City of Jacksonville. This case was on the denied rezoning request for the motor coach business on Ramsey Road. Judge Jack Jenkins of Morehead City heard the case and ruled in the City's favor upholding the Board of Adjustment's decision that the adjustment would not be allowed. Mr. Carter stated the Norris case should be heard sometime after the first of the year.

CLOSED SESSION

A motion was made by Mayor Pro-Tem Lazzara, seconded by Council Member Thomas, and unanimously approved to recess the Regular Meeting at 8:42 PM in order to convene a Closed Session for the purpose of discussing of the Spano litigation against the City and the property acquisition between Old Bridge St., Highway 17 and the New River as previously discussed by Council, pursuant to General Statute 143-318.11.

RECONVENE

Mayor Phillips reconvened the Regular Meeting at 9:05 PM and stated no reportable action was taken in Closed Session.

ADJOURNMENT

A motion was made by Mayor Pro-Tem Lazzara, seconded by Councilman Thomas, and unanimously adopted to adjourn the meeting at 9:06 PM.

Adopted by the Jacksonville City Council in regular session this 3rd day of January, 2012.

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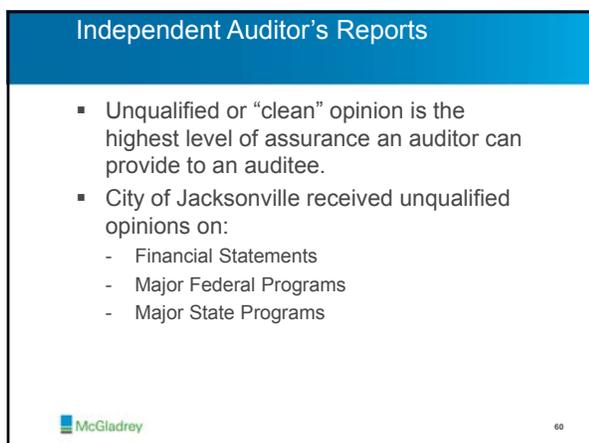
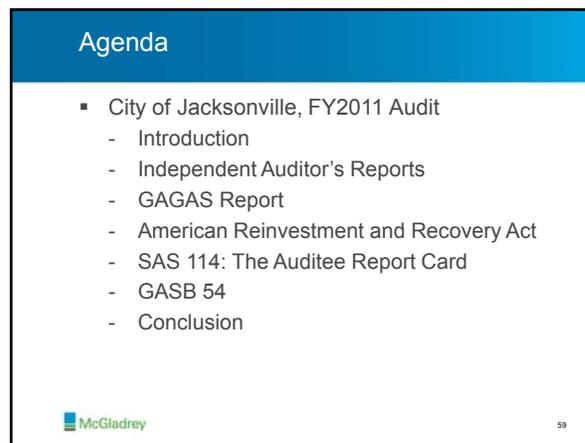
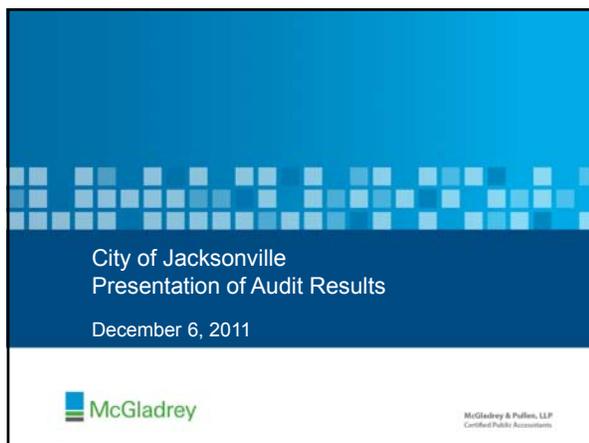
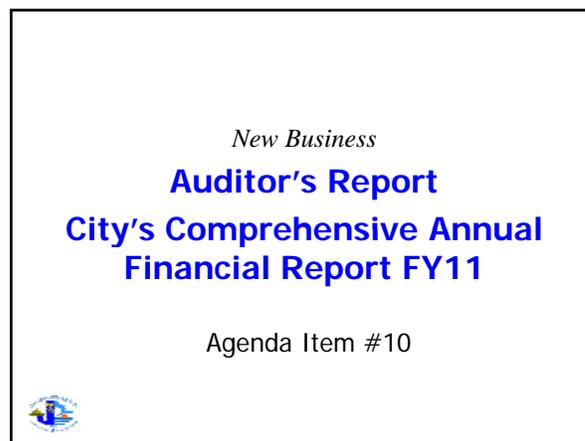
Sammy Phillips, Mayor

ATTEST:

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Carmen K. Miracle, City Clerk

## Exhibit A



### Independent Auditor's Report in Accordance With Government Auditing Standards

American Reinvestment and Recovery Act

- Significantly more work required.
- Greater transparency and reporting.
- No findings.

### SAS 114 Communication to Those Charged With Governance

- No audit adjustments.
- One passed adjustments.
- No disputes with management.
- No significant difficulties encountered during the audit.

### Implementation of GASB 54

- New classifications of fund balance
  - Non-spendable
  - Restricted
  - Committed
  - Assigned
  - Unassigned

### Non-spendable fund balance

- Classification includes amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained in tact.
- Previously reported as reserved fund balance.
- Amounts are not "available for appropriation".
- Examples include:
  - Prepays and inventory.
  - Compensating balances.

### Restricted fund balance

- Classification includes amounts that are restricted to specific purposes externally imposed by creditors or imposed by law.
- Previously reported as reserved fund balance
- Can include amounts that are "available for appropriation".
- Examples include:
  - Restricted for Stabilization by State Statute.
  - Restricted for Streets (Powell Bill).
  - Restricted for Capital Projects.

### Committed fund balance

- Portion of fund balance that can only be used for specific purposes pursuant to constraints imposed by the Jacksonville City Council (highest level of authority). Any changes or removal of specific purposes requires the majority action by the Jacksonville City Council.
- Previously reported as designated fund balance.
- Can include amounts that are "available for appropriation".
- City did not report any Committed fund balances.
- Examples include:
  - Committed for Self- insurance.

### Assigned fund balance

- Amounts constrained by the City of Jacksonville's intent to be used for specific purposes and are neither restricted nor committed.
- Previously reported as designated fund balance.
- Examples include:
  - Assigned for subsequent years' expenditures.
  - Assigned for capital projects.

### Unassigned fund balance

- Portion of fund balance that has not been restricted, committed, or assigned to specific purposes or other funds.
- Previously reported as unreserved, undesignated fund balance.
- If the total of restricted and committed fund balance exceeds total fund balance, unassigned fund balance will be presented as a negative.
- For the City's General Fund, unassigned fund balance approximates the old unreserved, undesignated fund balance.