

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, June 1, 2010  
**Time:** 6:30 PM  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**ROLL CALL**

Mayor Livengood called the meeting to order at 6:30 PM.

**PRESENT:** Mayor Livengood, Vice Mayor McHugh, and Councilmember Polanski

**ABSENT:** Councilmembers Giordano and Gomez were absent at roll call. Ms. Giordano and Mr. Gomez arrived at 6:32 PM.

**CLOSED SESSION**

City Council convened in Closed Session to discuss real property negotiations, regarding 230 N. Main Street (Apton Properties LLC).

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

None.

**PLEDGE**

The Mayor led all in the pledge of allegiance.

**INVOCATION**

None.

**MINUTES**

Motion: to approve City Council meeting minutes of May 11 and 18, 2010, as submitted

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Calendars/Schedule of Meetings for June 2010, as amended

City Manager Tom Williams announced two meeting time changes: the Valley Transportation Authority's Milpitas-Gilroy-Morgan Hill meeting scheduled this date was changed to start at 3:00 PM and the Economic Development Subcommittee on June 14 would start at 6:30 PM.

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATIONS**

Mayor Livengood commended Volunteer Income Tax Assistance (VITA) Volunteers at the Milpitas Library and heard remarks from the program's leader Mr. Shahid Mujtaba. The Mayor presented commendations to the volunteers who were present in the Council Chambers.

**PUBLIC FORUM**

Rob Means, 1421 Yellowstone resident, spoke about the IRS' Earned Income Tax Credit, and he received a letter that the IRS was to send him \$400. That would pay for a small additional parcel tax that was on the ballot June 8 for Milpitas schools - Measure B.

**ANNOUNCEMENTS**

Mayor Livengood thanked the City staff for the excellent Memorial Day celebration and ceremony held yesterday, and thanked all Councilmembers for being present.

Councilmembers Polanski and Giordano along with Vice Mayor McHugh also thanked staff for the Memorial Day program.

Councilmember Giordano thanked the Police Chief and Department for its final DARE program and for the success of the program throughout this past school year.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as re-ordered by the Mayor

Mayor Livengood announced he would handle all items in advance of the public hearing, first. Therefore, he planned to start the meeting with Redevelopment Agency with items on consent, and requested to include the agreement between the Milpitas Police Officers Association and the City, as part of the budget item (No. RA4).

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Mayor Livengood requested to add Item No. 3 onto the consent calendar, regarding his appointments to the Budget Task Force.

Motion: to add Item No. 3 onto consent

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

The Mayor requested to move the ordinance under Item No. 8 onto consent calendar.

City Manager Williams stated that staff requested that Council remove Item No. 15 from the agenda, for consideration at a later date. Mayor Livengood offered to include this request in the motion concerning the consent calendar.

Next, City Attorney Mike Ogaz read aloud the title of Ordinance No. 66.3, prior to the vote to add it to the consent calendar, for Item No. 8.

Motion: to approve the Consent Calendar (items noted with \*asterisk) as amended, with the addition of Items No. 3 and No. 8 and deletion from the agenda of No. 15

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**\*2. Commission Appointments**

Library Advisory Commission: re-appointed Margie Stephens to a term that expires in June 2012. Re-appoint Trinidad Aolin to a term that expires in June 2012.

Parks, Recreation & Cultural Resources Commission: re-appointed Vishnu Mathur to a term that expires in June 2013. Re-appointed Stephanie Fong as Alternate No. 1 to a term that expires in June 2012.

**\*3. Mayor's Appointments to  
Budget Task Force**

Appointed Milpitas resident Deepka Lalwani and Union Bank branch manager Anjula Nigam to the newly formed Citizens Budget Task Force.







3) Angie Stoner, public affairs representative for Walmart in northern California, stated she was pleased with the outcome of the Planning Commission approval of the staff recommendation to approve the EIR and allow the Walmart store expansion. She thanked Council and the residents for their time at this meeting. She gave some history on the 131,000 square feet store opened in 1994, which had been very successful. Walmart now wanted to accommodate its customers' needs with an 18,457 square feet expansion application. The project would provide an architectural modernization of its Milpitas store. She highlighted that Walmart was a sustainable business practices leader in retail, and its local branch was a strong anchor at the McCarthy Ranch shopping center. As an employer, Walmart offered many benefits to both part-time and full time associates including performance-based bonuses. She repeated the issue before the City Council was a land use decision and was not about company business practices. As was expressed at the Planning Commission hearing she quoted, "let the shoppers decide." Finally, she reported that the store expansion would provide 85 new jobs.

4) Miriam Montesinos, attorney for Walmart, stated the decision was about a request for a Conditional Use Permit and the EIR certification. It was regarding land use and was not a decision about the store and its practices. She told Councilmembers they should not listen to her and to Mr. Jolley. In fact, he was representing SaveMart and often was before City Councils against Walmart. The attorney urged the Council to listen to the professional staff that prepared the EIR recommendation and their recommendation for approval, as the Planning Commission did in March.

Council Questions:

Councilmember Giordano inquired as to the reason why two Planning Commissioners voted no on the project. Staff replied the objections regarded traffic impacts and the extended overnight hours of operation.

Councilmember Gomez had a question for Walmart inquiring, with sales tax leakage to other cities, how the expansion would help that issue. Ms. Stoner responded that sales tax increased when stores expanded, according to a study. She expected a mix of shoppers from both within and outside the community at the Milpitas Walmart.

Staff responded to a question from Councilmember Ms. Giordano, that the EIR did not consider all impacts city-wide as the store would not necessarily serve all of the community.

Next, Mayor Livengood called upon public speakers. Those who wished to address the Council were asked to line up by number (handed out in advance) and to limit comments to two minutes or less.

Public Comments:

5) Jose Garcia, was part of a coalition against Walmart expansion and Milpitas did not need another grocery.

6) Eric Cadian, San Jose resident, said it was not staff that made the decision. Though it was true that the Planning Commission voted in favor of Walmart's application, the information was not all correct as presented.

7) Pedro, said the City did not need more Walmart and had enough grocery stores. The project would result in job losses and he supported unions.

8) Greg Reeves, 33 year Milpitas resident and Save Mart employee, where he'd worked for many years, felt the Walmart expansion would have a negative effect including traffic and crime.

9) Mr. Tucker, of Healthy Communities, commented on the Walmart store in American Canyon previously located in Vallejo, and the additional police calls noted. As at the Gilroy store, it was not a level playing field.

- 10) Debbie Rankin, Arizona Ave. Milpitas resident, offered respect for both sides at this meeting and the speakers' conduct. She considered all the information given and was not requesting to close the Walmart store but did not support expansion.
- 11) Wiley Rankin, Arizona Ave. Milpitas resident, was proud to be a Milpitas resident and was pleased with the decorum at the meeting. The issue of health insurance was not brought up and reported that Walmart did not provide it to all employees.
- 12) Gary Long, Silveira St. Milpitas resident, was in favor of the project. But, there was no need or space for a medical clinic, and people could be sick in the store, if so.
- 13) Carey Dupold, a 40-year Milpitas resident, remembered when Ocean Market was a Safeway. He detailed change in grocery stores throughout Milpitas over the years. He considered it "liberty" to make choices and to make their own choices as shoppers.
- 14) Steve Preminger, Chair of the County Democratic Party, was opposed to the Walmart expansion in Milpitas. He found "predatory pricing" at Walmart stores.
- 15) Ms. Bease, 30-year Milpitas resident, on behalf of the 9-to-5 organization, was opposed to expansion at Walmart. There were enough grocery stores in town already.
- 16) Fred Zeise, 28 year Milpitas resident, said it was not fiscally responsible to allow the store to expand. Additional costs will be incurred with more traffic congestion in town.
- 17) Ann Zeise, long time Grand Teton Dr. resident, was concerned about sales of alcohol for 24 hours a day next to the Interstate 880 freeway.
- 18) Brian O'Neill, San Jose resident, represented County workers, stated it was about values and benefits. When employers don't provide health care, then it became a problem of the county to assist them.
- 19) Ed Riffle, long time Milpitas resident, said this was a union versus Walmart issue and the influence of employee unions. He talked further about labor union support of politicians.
- 20) Guy Haas, Milpitas resident, discussed unions and why they formed - for social justice. The location of the Walmart store was not near where most Milpitan residents live.
- 21) Warren Berry, business agent for a local union, felt the issue was about dignity. It took money to live in this area, and good wages from employers.
- 22) Rob Means, 1421 Yellowstone Ave, responded to comments made about the EIR, and conflict of interest of the firm that prepared the document (CBRE).
- 23) Josie Camacho, AFL-CIO Labor Council for Alameda Co., spoke on behalf of workers many of whom live in southern Alameda County and have families in Milpitas. Families and children were hurting in this economy.
- 24) Ms. M. Singh, Lacey Dr. resident for 15 years, was opposed to Walmart and believed other stores would close if Walmart was allowed to sell groceries.
- 25) Amisha Singh, 10 year resident and Milpitas High School student, was opposed to Walmart expansion. She would like a job she applied for to support employees.
- 26) A Milpitas resident, a woman originally from India, was a happy resident of this City and shopped at Walmart, since she liked the store.
- 27) Jay, a Milpitas resident, supported all small business and owned a small store less

than 3,000 sq. ft. She could not compete with Walmart and asked Council to please reject the proposal.

28) Alfredo Quintana, 10 year resident of Milpitas, was concerned that small businesses would be put out of business in this City and was worried about crime if Walmart was open 24 hours.

29) Denise Balangue, Milpitas resident, said the expansion would affect her local neighborhood and those who shop at SaveMart, which was the easily accessible store. She noted that she has also shopped at Walmart.

30) Bea, a Fremont resident and cabdriver in San Jose, drove many customers to Target and other stores and favored the Walmart store in Milpitas.

31) Carina Arvizu, Livermore resident and Walmart employee for 16 years, said the community accepted this store. She'd worked in 13 Walmart stores and Milpitas had the most appreciation. She supported expansion and the needed grocery section.

32) Alton Willer, co-manager of the Walmart store, spoke on behalf of the many employees at the store, and the desire of the customers in the Milpitas store.

33) Harry Adams, San Jose resident spoke on behalf of Assemblyman Alberto Torrico, and wanted to speak in opposition to the Walmart store expansion. He discussed the harm done to some, if the closure of other stores happened as a result.

34) Marisa Thompson, said with many businesses leaving California, she was glad to see one that wanted to grow. Expansion of Walmart would bring more shoppers into the City, and that was good for Milpitas.

Mayor Livengood announced the Council would take a short break at 9:08 PM. The meeting was reconvened at 9:15 PM.

35) An older Milpitas resident, a man, was opposed to Walmart expansion.

36) Alvaro Jordan, 26-year resident of Milpitas, was for the store expansion since it would hire more people and Walmart hired senior citizens - that was nice.

37) Christina, San Jose resident, shopped at Milpitas Walmart since it opened and would like a grocery at the store. She felt Walmart supported people with disabilities.

38) Nick, prior Milpitas resident but moved to San Jose, noted Walmart had pretty good deals and shopped there a lot. He would like to have a store that was open 24 hours/day.

39) Raymond Quebec, a SaveMart store bagger, heard discussion of choice and blight. Even if Walmart was built here, jobs would still be lost and businesses closed. He asked Council to vote no on expansion.

40) Arzhang Kalbali, Spence Ave. Milpitas resident, brought up 9/11 and fabricated information that brought the country into war. The City could hire another consultant where City and Walmart each paid half for a more thorough investigation.

41) Jim Shaw, 16-years Milpitas resident, made a choice to move here from San Jose. He was very happy with Great Mall and the many shopping choices. He supported the Walmart expansion.

42) Christine Shaw, long time resident of Milpitas, liked shopping choices available in this City. She supported Walmart having a bigger store with groceries.

43) Martin Roget, 30-year Milpitas resident, talked about Target expansion in San Jose

with fresh produce. He favored expansion of Walmart so he could shop there.

44) Nancy Mendizabal, Milpitas resident and member of the Coalition, was concerned for traffic mitigation. The fee Walmart would pay would not cover the added wear on roads from trucks and traffic. She asked Council to vote no on store expansion.

45) Robert Marini, Milpitas resident, felt Walmart was a company that caused more job losses including minimum wage jobs. He was opposed to the store expanding.

46) Jerry Lee Riggero, was a San Jose resident and Nob Hill Foods employee of 32 years including eight in Milpitas. He worried about co-workers and young union members. If Walmart expanded, he worried that SaveMart could close.

47) David Jordan, resident since 1984 in Milpitas, wanted the best for the community. Walmart had been a good corporate citizen and a good business. He asked for support of Planning Commission decision. Walmart was an asset to community.

48) Romi Pritchett, was a long time Walmart shopper and listed benefits to Milpitas shoppers, and support store expansion and more jobs.

49) Erin Fitzpatrick, was frequent a Walmart shopper, who said consumers deserved choice and asked Council to reject the appeal.

50) A man, a Creighton Ct. resident, was present to vote with his dollar and said let shoppers decide.

51) A woman, who was a shopper in this community supported Walmart and shopped there. It was a good idea to allow the Walmart store expanding.

52) Ivan, Livermore resident and Milpitas Walmart store employee as assistant manager, said the other stores at McCarthy Ranch would help this store too. He thanked the customers who came to City Hall tonight.

53) Ron Lind, 31-year Milpitas resident on Yosemite Dr, was president of UFCW union. He asked Council to pick a side and was opposed to expansion of Walmart.

54) Peter Arellano, Gilroy City Councilmember for nine years. He faced a similar situation in his town that did not yield the best situation. Walmart closed down its old store and now it was vacant. Two grocery stores closed after the Walmart grocery was approved. Labor did not support him in his election. He was only trying to give Councilmembers his point of view from a nearby City.

55) Don Gossen, north San Jose resident, stated Walmart was not a job creator – it was a job aggregator. Keep a level playing field with other retail stores.

56) Tan Su Lee, Sunnyhills United Methodist Church pastor and Berkeley resident, said his congregation voted to oppose the store expansion. Four church members spoke out opposed at the meeting. He wondered what specific benefits Walmart workers had.

57) Mable Lee, Sunnyvale resident, was not here for any agenda. She wanted to choose where to shop and liked Walmart. Competition was good, so reject the appeal.

58) Hugh Dang, San Jose resident, a dentist and a small business owner, noted competition was good, but it was difficult for small businesses to compete against large ones. He did pro bono care for a Walmart associate in Milpitas because she did not have health care provided by her job.

The conclusion of the public hearing section of this matter then was reached.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5  
NOES: 0

City Attorney Mike Ogaz asked staff to provide a response to the written comments received from the appellant which was distributed at the beginning of the meeting.

Planning Director James Lindsay reported that staff reviewed the appellant statement from Mr. Jolley submitted earlier. Consultant Grant Gruber came to the podium, a representative of the firm that prepared the EIR document for this project, to address solid waste and other issues.

Mayor Livengood reported that he was not happy with the last minute document submitted, since he had previously requested both sides not to do so.

On the solid waste front, Mr. Gruber said no new issues were raised in the document submitted. The capacity was adequate at the Newby Island landfill to handle the additional waste from the store expansion. 57 tons of construction waste and 45 tons annual increase in waste at the store would be generated. Consumer waste was an issue dealt with after shoppers returned home.

Amy Herman, from CBRE firm, addressed the urban decay issue. Four areas were raised in Mr. Jolley's statement to which she responded. Retail traction base of surplus (versus excess supply) was way beyond semantics. On store impacts, the statement claimed stores would close if Walmart expanded and urban decay would ensue. The potential for store closures was a worst-case scenario. Property must be examined to determine blight versus urban decay by definition. Regarding Walmart sales, a comment was about possibly under-stated figures and the attorney said she used a variety of source data used by many businesses. Regarding impacts in other communities, Walmart believed urban decay had not resulted due to any Walmart supercenter development.

Mr. Gruber addressed the public safety comments with a letter from the Milpitas Police Department. Also, he spoke to staff at the City of American Canyon and claimed that the Walmart supercenter there had not resulted in any additional police needs.

Councilmember Giordano asked a question about South Bay Labor Council interviews referenced by one of the speakers. She asked the City Attorney if the Vice Mayor must recuse himself. Mr. Ogaz responded that he had not studied or looked into this question so he was not prepared to comment on any answer to her question.

Vice Mayor McHugh replied that he had no need to recuse himself, regardless of what the speaker had said. He felt that the Walmart expansion would not have an overall good impact on the City. Other grocery stores had come to town with no issues. The salaries and benefits at Walmart and the gender discrimination lawsuits along with those cases that were in the news media about disposal of hazardous material disposal by Walmart were all of concern to him. He noted a legitimate concern with traffic. The testimony of several of the speakers tonight trumped the bulk of the comments from supporters, half of whom were employees. Mr. McHugh wanted to move to overturn the Planning Commission decision.

Next, Councilmember Polanski thanked everyone for joining the City Council at this meeting. With a 12-inch tall stack of material for this public hearing, she did read all the e-mails, letters, and received many phone calls from citizens. She had met with representatives of Walmart and also with union representatives, community members, and watched some of the Planning Commission hearing. Overall, her view was that store expansion would have a negative impact annually and less tax revenue. The employment

numbers in the EIR document concerned her, and it gave no consideration of closure of other stores in Milpitas. The City was already overserved by grocery stores. No credible mitigation strategies were given in the EIR and traffic was one of the greatest challenges with the project (final EIR did not address all traffic congestion). Her decision was that the Walmart expansion was not right for Milpitas. She considered carefully the immediate impact and the long term impact for the health of the community.

Councilmember Giordano noted her years of service on the Planning Commission and City Council. She asked Council to look at the staff recommendation which was appropriate and sound. She looked at the Planning Commission's decision, and did not agree with the reasons given by the two members who voted no. On the issue of urban decay: if that was true for this project, then the Great Mall would never have opened. This is a "business opportunity community" here in Milpitas and she saw no reason not to approve the Walmart expansion project.

Mayor Livengood said it was exemplary how this matter was handled. Council must decide if the store expansion was a good thing or bad thing. He felt both sides have been inflated in their comments. He agreed with how Ms. Polanski viewed this matter and appreciated her thoughtful comments. The Mayor did not believe that having Walmart expand provided choices and he learned this by studying the issue and saw it in other communities.

Councilmember Gomez did originally want to support the project, especially in this economic climate. However, there were too many concerns so he could not vote in favor of expansion for Walmart.

Vice Mayor McHugh said Councilmember Polanski did an excellent job of explaining her views, and he appreciated that. Traffic would have a significant impact. He was concerned with the impact on the local SaveMart store and residents being able to walk to that store was important. He did not think expansion was good for the community and that Walmart should not be rewarded for its business practices.

The City Council then voted on the matter as follows.

(2) Motion: to overturn the Planning Commission actions regarding the Walmart store expansion project and to support the appellant

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

Motion carried by a vote of: AYES: 4  
NOES: 1 (Giordano)

(3) Motion: to adopt Resolution No. 7995 denying the certification of the Environmental Impact Report for the Walmart store expansion project

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 4  
NOES: 1 (Giordano)

(4) Motion: to adopt Resolution No. 7996 denying the Conditional Use Permit to Walmart for its expansion project

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Motion carried by a vote of: AYES: 4  
NOES: 1 (Giordano)

**REPORTS** Four items were approved on the consent calendar.  
**NEW BUSINESS** One item was approved on the consent calendar.  
**ORDINANCE** One ordinance was introduced on consent calendar.  
**RESOLUTION** One resolution was adopted on the consent calendar.  
**BIDS AND CONTRACTS** Five items were approved on the consent calendar.  
**ADJOURNMENT** Mayor Livengood adjourned the City Council meeting at 10:26 PM.

**The foregoing minutes were approved by the Milpitas City Council as amended on June 15, 2010.**

  
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Mary Lavelle  
City Clerk