

Council Chambers  
300 First Street  
Woodland, California

January 4, 1994

The Woodland City Council met in regular session at 7:32 p.m. in the City Hall Council Chambers.

PLEDGE OF ALLEGIANCE:

Mayor Rominger invited everyone present to join her in the pledge of allegiance to the Flag of the United States of America.

ROLL CALL:

COUNCIL MEMBERS PRESENT: Rominger, Flory, Crescione, Sandy, Slaven

COUNCIL MEMBERS ABSENT: None

STAFF PRESENT: Kristensen, Ruggiero, Murphy, Wegener, Buchanan, Barry,  
Nies, Smith

MINUTES:

On motion of Council Member Sandy, seconded Council Member Flory and carried by unanimous vote, the City Council approved the minutes of the regular meeting of September 21, 1993; adjourned meeting of November 23, 1993; and adjourned meeting of November 30, 1993, as prepared.

COMMUNICATIONS:

1. From Jim Noble a letter was received giving his views on the adoption of a smoking ordinance. Council was scheduled to consider this issue under the public hearing portion of the agenda.

COMMITTEE REPORTS:

1. From Library Services Director Marie Bryan a report was received transmitting the minutes of the Library Board meetings of November 1 and 15, 1993. No Council action was necessary.

2. From Parks and Recreation Director Tim Barry a report was received summarizing action taken at the Child Care Commission meeting of December 1, 1993. No Council action was necessary.

3. From Assistant City Manager Kristine O'Toole a report was received transmitting the minutes of the Woodland Access 43 meeting of December 8, 1993. No Council action was necessary.

4. From the Parks and Recreation Director a report was received summarizing action taken at the Commission on Aging meeting of December 14, 1993. No Council action was necessary.

5. From the Parks and Recreation Director a report was received summarizing action taken at the Parks and Recreation Commission meeting of December 15, 1993. No Council action was necessary.

PUBLIC COMMENT:

Mayor Rominger thanked Carolyn Moore and Steve Borchard for serving as camera operators for the meeting. She also invited the viewing audience to file applications in the City Manager's office for nominees for the 1994 Community Service Awards.

HEARING - PROPOSED SMOKING PROPOSAL:

Mayor Rominger said this time was set for a second public hearing to consider a proposed smoking ordinance.

City Manager Kris Kristensen said the proposal came from the Committee for a Smokefree Woodland at the October 19, 1993 Council meeting. The first hearing on the matter was held on December 7, 1993, at which time the Council received a couple of petitions, one in favor of this type of ordinance and another against the ordinance. Council also received a letter from the City Attorney outlining some of his thoughts. Council had agreed to hold this second public hearing to receive further public input, and he requested that Council give some direction after the hearing. He said the proposed ordinance is based on the belief, supported by research, that tobacco smoke is a significant health risk to non-smokers as well as smokers. Because of this the Committee for a Smokefree Woodland believes the City should (1) protect the public's health by prohibiting smoking in public places and places of employment; (2) recognize that the need to breath smoke-free air has priority over the desire to smoke; and (3) prevent access to tobacco products by minors through vending machines. The proposed ordinance basically would ban smoking in all enclosed and certain outdoor public places. Smoking would not be regulated in bars, most private residences, and private functions and private clubs in private places. Enforcement is outlined as a City responsibility and penalties are prescribed. He suggested that Council proceed with the hearing.

Mayor Rominger said she was absent at the first public hearing and viewed a video tape of the meeting so she heard all of the public testimony given at that time on the issue.

She opened the public hearing.

Arnold Larson, resident of Woodland, said he was opposed to the ordinance. He said he has not smoked since 1968, and he is healthy and does not need a Council or other governmental entity to tell him when to quit smoking.

Leonard Kirkpatrick, 1736 El Paseo Drive, Woodland, questioned the statistics on deaths caused by smoking.

Nancy Santa Maria, 215 Toyon Drive, Woodland, said she is against smoking. She said her husband died of a massive heart attack on the day she was to return to work from maternity leave. She was left with a three-month old son to raise alone without any warning. She said the coroner attributed her husband's untimely death at age 51 to his thirty years of smoking. She said her husband was concerned with his physical well-being and was an avid runner and cyclist. She said her father also had extensive throat surgery because of cancer, but she said he still continues to smoke today. She said she would do anything to make it more uncomfortable for someone to smoke and does not want to be a witness to a shortening of the lives of her friends.

David Eddy, 13 Sunrise Street, Woodland, presented petitions from local citizens and citizens from surrounding communities who are opposed to ordinances restricting their personal freedom.

Wende Litchfield, 409 Elizabeth Way, Woodland, said she is against the ordinance. She does not smoke and never has smoked. She felt there is more smoke from burning fields than from cigarette smoke.

Kenneth Stephens, 21 Nevada Avenue, Woodland, said he is against the ordinance. He said the ordinance would prohibit smoking at the Fairgrounds, and if this occurs the attendance will drop. He said he was a smoker for 58 years but chose to quit.

Dan Lambert, 1335 Colette Way, Woodland, said he is against the ordinance. He said he has been smoking all of his life and feels businesses should create their own non-smoking regulations.

James Piazza, owner of Coffee Hut Restaurant, said he does not smoke but is against the proposed ordinance. He said he allows smoking in his restaurant and has a very good filtering system that eliminates problems to non-smoking customers and employees.

Marlene Hanson, 1632 Grove Avenue, Woodland, said she is a school nurse of Woodland Joint Unified School District. She urged adoption of the ordinance. She felt it is the responsibility of the Council to adopt laws to protect the health of our citizens. She says she has the responsibility to explain to young people why people smoke and its addiction. She said smoking has been around for hundreds of years, but the Food and Drug Administration would not allow tobacco on the market today knowing what we know now. She said students indicate they have no problem buying cigarettes in stores and in vending machines. Banning cigarette sales and banning smoking will not instantly show a decrease in the number of youths smoking, but it will give young people the message that smoking is not socially acceptable. There may be a long range impact on the youth in our community. She said she was opposed to placing the measure on the ballot because she felt it was the Council's responsibility to vote on the issue and the cost would be

excessive.

Kathryn Shack of the County Department of Public Health, 825 East Street, Woodland, said of the 435,000 annual deaths from smoking one half had been using tobacco since the age of 13 and approximately 25 percent of those had been using tobacco since the age of 11. In 1988 one million Americans under the age of 18 were purchasing tobacco spending \$1.3 billion on a billion packs of cigarettes. The earlier you start using tobacco the harder it is to stop and the more likely the habit will kill you. Prevention is extremely important because cigarette smoking is not a casual habit; it is governed by the whim of the smoker, and smoking behavior once established is very hard to modify. Tobacco, she said, is a gateway drug to other drugs. She said children can purchase cigarettes from vending machines about 90 to 100 percent of the time, and children have access to vending machines in adult only bars about 77 percent of the time. She said Woodland has smoke free schools but does not have a smoke free environment. She said tobacco free environments in and out of school do decrease acceptance and send a consistent message to youth. She pointed out that the Fairgrounds is not covered by the ordinance.

The City Manager said the Yolo County Fairground is outside the City limits, and if the ordinance is adopted, it will not apply to the Fairgrounds property.

Vice Mayor Sandy said a recent state law prohibits smoking in all State buildings so that decision may have already been made. (The Fairgrounds is owned by the State.)

Ann Edmondson, 921 Cleveland Street, Woodland, said she favors the ordinance, particularly with respect to second hand smoke. She said government has a requirement to seek to improve public safety. She also voiced concern about the rising health care costs, and the ordinance will make a small contribution to cut down these costs.

Diane Swann of the County Public Health Department, 825 East Street, Woodland, addressed the feasibility of using other laws to protect people from second hand smoke. Currently existing laws cover limited areas or narrow sectors of society. She said, for example, the California Health and Safety Code prohibits smoking in grocery stores and public transportation vehicles. The Code was recently amended January 1 to ban smoking in private homes while used for day care and day care centers. The Americans for Disabilities Act which took affect in 1992 and the California Housing and Fair Employment Act prevent discrimination against disabled people. Disabilities include people with respiratory ailments. As an example of how these are used, she said, three mothers of asthmatic children have filed lawsuits to ban smoking in three fastfood restaurant chains. No government regulation exists which protects people from second hand smoke. Through common law which is established by court decisions not government regulation employers have a duty to provide a work environment reasonably free of recognized hazards. She said Courts have found that tobacco constitutes a recognizable hazard and employees have won negligent cases based on unemployment compensation after quitting to avoid smoke and workers' compensation because of

illnesses suffered due to tobacco smoke. She said claims and lawsuits are extremely expensive and time consuming.

Stephanie Gotthardt, resident on Lincoln Avenue in Woodland, said she is the marketing director of the County Fair Mall, but she is not representing the Mall at this time. She said she feels strongly about the adoption of an ordinance and feels a no smoking ordinance will not negatively affect commerce or attendance in public businesses or gatherings.

Martha Fuchslin said no one should have to put up with second hand smoke and urged the Council to adopt a no smoking ordinance.

Valerie Burks, resident of Yolo, California, said she lived in Woodland for 47 years before moving to Yolo and presented signatures to Council opposing the adoption of an ordinance. She felt citizens' rights are being taken away.

Dr. Ron Sprinkle, family doctor working for Yolo County Medical Services, 8 North Cottonwood Street, Woodland, said the tobacco ordinances being considered are similar to proposed legislation from 10 to 15 years ago. He said just as in the case of safety belt legislation the facts are not in doubt; we have an expensive deadly problem and some reasonable, practical solutions before the Council. The safety helmet is a similar issue. He said every package of cigarettes that is smoked costs each of us \$5.00 above what the smoker pays in terms of health costs, fire costs and fire and health insurance. To be fiscally responsible, the Council needs to pass the ordinance.

Bill Flynn said smokers do kill and a major portion of tonight's discussion is second hand smoke. He said they now have 1,100 signatures of people who feel their rights are being taken away with the proposed ordinance. He then read a prepared statement in opposition to the ordinance and questioning the results of studies conducted on second hand smoke.

Ann Bonham, research scientist, reported on the impact of passive smoke and the causes of coronary artery and cardiovascular disease. She urged Council's support of the ordinance.

Dr. Jesse Joad, pediatric allergist and pulmonologist, spoke in support of an ordinance which prohibits smoking in public places. She then reported on studies of the exposure of young children to second hand smoke.

Norma Jean, resident of Chestnut Street in Woodland, spoke in opposition to the ordinance. She said she feels citizens have lost enough of their choices, and she said she has heard a lot of scare tactics and lobbying. She said many of the health hazards depend on what each individual's health condition is and each persons metabolism.

Bernard Newell, 253 Chestnut Street, Woodland, said he is in opposition to the

proposed ordinance and is tired of government controlling his life. He said the people are the government and is tired of people who do not vote. He said his mother has been subject to second hand smoke all her life and does not smoke, and she is 85 years old.

Dr. Jim Barrett, a family physician, said he is a resident of Woodland. He said his father was a smoker and now sits in a residential care facility tethered to an oxygen tank. He said is an avid bicyclist, but the second hand smoke from his childhood has affected his lung capacity. He said he would not advocate making smoking illegal, but he urged the Council to adopt the ordinance to protect citizens of Woodland.

Jim Bivens, 38398 County Road 29, Woodland, said he works for the American Cancer Society as a living. He said he lost his grandfather due to smoking. He said other communities have not lost business or revenue as the result of adopting smoking ordinances. He also spoke about the rights of children. He said the proposed ordinance is not a rights issue; it is a health issue.

Kristina Smith, Woodland High School student, said smoking is now allowed at the High School, but on any given day students can be found smoking before school, during and after school -- at least 20 students. She said also smoking occurs at the junior high schools, and she supported the proposed ordinance.

Karen Shepard, 925 Second Street, Woodland, said she is a medical social worker at an acute care hospital. She said she was addressing the Council as a participant in a health care setting and an observer of many of the consequences of smoking. She said much of her time is spent in a maternity unit where babies are born, and research has shown that women who smoke during pregnancy often deliver babies with low birth weights. She said these babies have no control over their mother's smoking while they are in the womb. She said she has also observed patients with lung disease and lung cancer, and the quality of their lives and their families is greatly compromised by the disease caused by their smoking. She urged the Council to pass the proposed ordinance.

There being no further comments, Mayor Rominger closed the public hearing.

City Attorney Bob Murphy advised the Council that procedurally the Council in its discretion can decline to adopt any ordinance or can adopt an ordinance in any form as long as it is not preempted by State law or has unconstitutional principles. Alternatively the Council can have an ordinance prepared which a majority of the Council feels is an acceptable document and approve placing that ordinance on the ballot to be voted up or down. Another alternative is to place some generalized short statement on the ballot and ask for an advisory vote which would either be voted up or down. However, he said the advisory vote is not binding in either direction, and the issue comes back to the Council whether to adopt an ordinance or not adopt an ordinance. With respect to any elections, he said, there is a very tight time frame. January 14, 1994 is the deadline for approving a measure for the April 12, 1994 ballot, and March 11, 1994 is the deadline for approving a measure for the June 7, 1994 ballot. He pointed out that there really is not an ordinance before the Council at this time. He said a proposal has been presented, but the proposal

is not in final form. The proposal would have to be reviewed with respect to content.

Vice Mayor Sandy said this proposal would not pertain to the County Fair property. The County Fairgrounds property is not in the City limits. He said he felt there are sincere people on both sides of the issue but that any one who is going to develop a decision on this issue needs to consider public health, whether or not the individual Council Members believe that second hand smoke causes a public health threat. He said it is his opinion that it does. He said he wanted to clarify the purpose of this proposal which is to try and eliminate smoking in public places. The proposal's intent is not to eliminate smoking. The proposal is not a ban of smoking in public places. In fact, he said, the ordinance has an exemption which would enable businesses if they chose to allow smoking to continue. The proposal requires a separate room and a separate ventilation system, but businesses could chose that option. He said the rights issue is tough because it depends on which side of the aisle you are on. A person has a right to smoke until it begins to effect others; when the smoking effects others then that right is circumscribed by its impact on them. He said he has been told people have a right to go somewhere else, but this is not flattering or practical. He said he and his family do not go to some restaurants because of the smoking problem, and he has spoken to many people in town who feel that way. The choice issue would be a valid argument if in fact the scope of choices and the diversity of choices was the same. If there is a sufficient number of non-smoking restaurants of sufficient type and variety in Woodland to present the non-smoking public with a clear, logical choice, there should be an equivalent number of restaurants which allow smoking with equal variety. He said the fact is that the choice does not exist in Woodland; there are very few non-smoking restaurants in Woodland. The clearest part of this issue, he said, that everyone can agree to is that there is no conceivable reason in the world why a child in this time ought to be able to walk up and buy cigarettes out of a vending machine. He said that is beyond discussion. He said the question as to whether an ordinance would affect business and whether businesses would go elsewhere are valid concerns. He said there are some personal and consumer behavioral habits that need to be looked at. Finally, he said cigarettes are a legal product, but legal products are restricted. He said the statement that there are too many laws should not be the rationale for not passing another law. He said the smoking proposal needs to be trimmed back. He felt the proposal is too broad and in places is illogical, but he said he feels no one should be exposed to what he believes is a valid and legitimate threat to their health.

Council Member Flory said he is in favor of some sort of ordinance. He said there is no doubt in his mind that smoking whether directly or second hand has some effect on people's health. Even if other elements cause breathing problems, smoking agitates breathing and health problems. He said right or wrong the Council has to give some credence to the fact that in the two public hearings there has been testimony from at least four local doctors and several nurses who treat people who live in this community and are in support of an ordinance and give reasons why. He said insurance companies give deductions if you are a nonsmoker because smoking is a health issue. He said the smoking proposal needs revision; Council must be realistic and determine what will work

in the community. He said if the Council decides to formulate an ordinance he will submit his comments at that time. With respect to voting on the issue, he said he felt it was the responsibility of the Council to make the decision because that is why the Council Members were elected. He said there would be outside influences on this community if the Council decided to place the issue on the ballot, and this process would continue to divide the community. He said he felt some businesses might lose at first but in the long run the businesses would gain support. He said the Woodland Council will not be influenced by actions taken by the Council in the City of Davis, and he would support an ordinance that would curtail smoking in public places.

Council Member Crescione pointed out that none of the Council Members smoke. He questioned what the proposal is truly for. He said he was not certain if the proposal is just to pass an ordinance or to determine an issue. He said there are some difficulties with the proposal. The stated purpose of the proposal is to eliminate smoking in public places, so he said the issue of rights comes up. The elimination of second hand smoking can be taken care of, but the elimination of the smoker is a problem. He said he has looked at ordinances from other cities which are poorly written because the jurisdictions are trying to handle a behavior with an ordinance. He also questioned when agencies will stop adopting new laws. He said he is concerned about enacting an ordinance that cannot be enforced. If he enacts a law, he said, he wants to be sure the law works. He said he was bothered by the idea of presenting the issue to the voters; he said he felt the Council was elected to make this type of decision. Another alternative, he said, is to place a big enough tax on the purchase of cigarettes that people will not be able to afford them. This would curb some of the problem but does not solve the problem. The solution he proposed was to establish a middle ground through the use of the Uniform Building Code. This document does control environment. He said the Uniform Building Code has been used to protect lives, for example, the sprinkler ordinance. The Code has the ability to segregate uses within a building within a space. The Code can segregate by occupancy, by volume of people, by the type of use of the structure and whatever activity is going on within the building. For example, he said a restaurant can identify a smoking area and a non-smoking area. He suggested that a smoking area could be physically separated and the air movement could be increased within that space by at least one-third. The expenses of making these physical changes become minimal and create a proper environment to give choice to individuals. He said the air that can be exhausted out can be filtered. This regulation could be enforceable by the building inspector, which is a big issue. He said the building inspector has more power to walk into a building than a police officer. He said new buildings would have to adhere to the Building Code regulation, and remodelling would also be addressed as well as licensing. When licenses are issued there must be compliance with the Code. He said there could also be deadlines placed on complying with the requirement. Because different spaces have different requirements with varying volumes of people coming into a building the ordinance could be tied to density in terms of people in relation to the space. He said this is the way the Fire Code is set up. He said if the Council's intent is to attack second hand smoke his proposal will work.

Council Member Slaven said he is concerned with the health aspects of smoking.

As a former teacher and athletic coach educating students on health issues was an important part of his life. He said he did not believe that a smoking ordinance would cut down on smoking. The biggest problem is second hand smoke. He said he is also concerned about people's rights. He said he was elected to represent the people of Woodland, and this issue seems to be divided. Both sides have expressed their points very well, and this is a tough decision to make. He said he was concerned with the business community which is having a tough time. He said in visiting restaurants in Woodland he did not see a problem with smoking.

Mayor Rominger said she feels the City Council Members are role models, and none of the City Council Members smoke. The Council can understand the problems that nonsmokers have to face, but she also recognized that there are others who feel they have a right to smoke. She said smoking is legal. With respect to the work place she said that S.B. 198 is the workers' injury and illness prevention program. She said this is a law passed by the State Senate requiring every employer to have a written injury and illness prevention program in their place of work. This legislation provides that any employee who feels that there is a hazard in the work place must report that hazard to the employer so that the issue may be addressed. The employer has an obligation to address that hazard. Employees presently can go to their employer, raise the issue with the employer and settle their differences with the employees individually. She said that type of law is already in place, and the City Council does not need another law to address that issue. She said Council Member Crescione has presented an interesting alternative to a new ordinance for the City of Woodland. She said the proposal the Council received is very restrictive and unacceptable as written. She suggested that discussion on this issue be continued. She felt it would be appropriate for the Council to put together its own group of interested citizens, some from the Committee for a Smokefree Woodland, some from the Chamber of Commerce, some from those who spoke at the hearing as well as Council Members. The group could take the ideas that have been presented to Council in both of the public hearings and by the Council Members at this meeting to find some sort of middle ground. She said this process will make everyone feel as if their rights have been acknowledged, and Council can go forward and feel good about what is put in place.

This issue is very divisive, and she said she received calls from many people, an equal number on both sides of the issue. She said she felt a task force would be the best avenue to come to some conclusion that all can live with.

Council Member Flory said that at least three Council Members voiced concerns about the proposal as submitted but probably if the Council formed a task force the Council before the next meeting should submit the exclusions or changes they would like to see. He said it would not help the task force review the issues if the Council already has objections to certain aspects of the proposal.

Mayor Rominger said the Assistant City Attorney, Ann Siprelle, suggested that the Council exempt long term health care facilities because they are already covered by other law and smoke shops because of the nature of the business.

Vice Mayor Sandy said personally he would rather say yes or no on the proposal and move on down the road. He said the smoking issue is divisive, and he questioned whether a committee bringing the two sides together could hammer out anything at all. The ultimate compromise on this issue is to require businesses to set aside smoking and no smoking areas with established percentages for each. He said, however, that this approach is generally not acceptable to the people in favor of an ordinance because studies point out that tobacco smoke moves.

Council Member Crescione said he felt there was definitely a mid point, and he viewed the proposal already submitted as a "shopping list." He said now we need to be able to put the list into a usable process. He said this will be difficult because we will be taking behavior and personal rights and trying to administer them with the law. He said he feels with the use of mechanics (the Uniform Building Code) a room can be made smoke free, but he said he cannot tell someone that they cannot smoke. He said the ultimate is education.

Council Member Slaven said he understands Council Member Sandy's concern that there have been two public hearings and a proposal has been submitted. He said perhaps the Council should go ahead and make its decision based on the information the Council has now. He said the committee could then work on the issue to bring about agreement.

Mayor Rominger said the Council Members agree that the proposal submitted is too restrictive, so taking a vote on the proposal would kill the issue.

City Attorney Bob Murphy pointed out that the vote would be conceptual because the proposal is not an ordinance in proper form.

Council Member Flory said he could support having no smoking areas with separate ventilation systems in restaurants and bars.

Vice Mayor Sandy said the proposal provides as an exemption that any business can choose to establish a separate room with a separate ventilation system and continue serving smokers.

Council Member Crescione said the problem with the proposal is enforcement and that is the reason he would like to tie regulation to the Uniform Building Code. He said there is going to be a problem when someone calls the Police Department when a person is smoking; there are other needs for Police Officers. He said there is no use in approving an ordinance which is not enforceable. He said he supported the Mayor's suggestion of forming a task force to investigate the issues.

The City Attorney pointed out that one of the difficulties with the current proposal as written is that it is questionable about providing that businesses establish a separate ventilation system for smokers. He said that would need to be cleared up before an ordinance could be enforced.

On motion of Council Member Sandy, seconded by Council Member Crescione and carried by unanimous vote, the City Council approved the formation of a task force to consider all of the testimony given at the two public hearings (December 7, 1993 and January 4, 1994) regarding the smoking proposal, take into consideration the proposal that Council Member Crescione presented at this meeting, along with the comments from other Council Members and scientific data, and report back to the Council with a recommendation as to how to proceed from here.

The City Manager asked Council about the make-up of the task force, and he asked for clarification about the mission.

Council Member Crescione said his primary issue is second hand smoke.

Mayor Rominger said her issue is that smoking is not illegal; however, she recognized that nonsmokers have rights too. She felt there can be some middle ground where we can be considerate of others, and a task force can develop some middle ground where there is basic consideration for others with incentives.

Council Member Flory said the main issue is going to be second hand smoke, and that is the what the task force would have to address both in public places and in the work place.

Council Member Slaven said enforcement is also a part of the ordinance that needs to be clarified.

The City Manager said the Council can discuss the type of task force it wants, and staff will report back for Council action at a later meeting with the outline of the task force and a problem statement.

Council agreed that the task force shall consist of two persons who spoke at the public hearing in support of an ordinance, two persons against an ordinance, two representatives from the Chamber of Commerce (including a restaurateur), and one representative from the medical field.

The City Manager said staff will report back to Council on February 1, 1994.

**Council took a recess from 9:55 p.m. until 10:10 p.m.**

#### HEARING - TRANSFER OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS:

Mayor Rominger said the second public hearing scheduled is to consider the transfer of Community Development Block Grant funds from Development Assistance Corporation program to a Transitional Unit.

Senior Planner Howard Nies said the staff recommendation is to transfer \$120,049

in 1993-94 Community Development Block Grant (CDBG) funds from the Development Assistance Corporation (DAC) of Yolo County program for low income housing in Southeast Area to a DAC program to complete acquisition of Transitional (housing) Unit at 313 Court Street, Woodland. He said DAC finds it is unfeasible to complete the former project, and staff supports their request for the transfer.

Mary McCurdy said right now the Transitional Unit is being used for women with one child who would be coming into their site. She said it is a group living house which helps women to get onto the work force. Most women stay in the facility up to a year or longer if they want to start paying their own rent.

Mayor Rominger opened the public hearing, and there being no comments she closed the hearing.

On motion of Council Member Sandy, seconded by Council Member Slaven and carried by unanimous vote, the City Council approved the transfer of \$120,049 in 1993-94 Community Development Block Grant funds from the Development Assistance Corporation (DAC) program for low income housing in the Southeast Area to a DAC program to complete acquisition of a Transitional Unit at 313 Court Street, Woodland.

#### REPORTS OF CITY MANAGER:

##### CONSENT CALENDAR:

On motion of Council Member Sandy, seconded by Council Member Slaven and carried by unanimous vote, the City Council approved the following Consent Calendar items:

##### RESOLUTION NO. 3783 - DISADVANTAGED BUSINESS ENTERPRISE PROGRAM:

The City Council adopted Resolution No. 3783 approving and authorizing the City Manager to execute the updated Disadvantaged Business Enterprise Program.

##### HEARING SET FOR STORM DRAIN SERVICES AND FACILITIES FEES:

The City Council set January 18, 1994 for a public hearing to consider a proposed ordinance for storm drainage services and facilities fees.

##### REGULAR CALENDAR:

##### PROPOSITION 172 FUNDS:

City Manager Kris Kristensen said that on the November 2, 1993 State-wide

ballot Proposition 172 was approved by a majority of voters. This will provide the City with some sales tax funds for public safety services which the City has not yet budgeted. On December 7 the Council discussed this topic and conveyed to staff its desire to use the funds to either replace previous cutbacks in police and fire services or to supplement existing police and fire services. He said the State originally estimated the City would receive \$180,000 annually from this tax, but the early receipts of those funds indicate the City will receive less than that. A rough estimate is \$120,000 to \$150,000, but this could change. The Fire Chief and Police Chief submitted memos on how they would like to see the funds spent. He said the Fire Chief has outlined his desire to reinstate effective February 1, 1994, a Firefighter position which has been vacant for quite some time for budget reasons. The annual cost would be \$51,357. Police Chief Russ Smith has requested the funding of two new Police Officer positions effective July 1, 1994 to reduce emergency response times to Priority 1 calls. The total cost for those two positions is \$94,847 on an annual basis. The City Manager recommended authorizing the one Firefighter position effective February 1, 1994, authorizing one of the Police Officer positions effective July 1, 1994, and planning on revising the second Police Officer position in May 1994 when staff has a better understanding of how much the City can expect in Proposition 172 funds. He also pointed out that the City is still looking at a deficit of \$600,000 in the fiscal year beginning July 1, 1994. This assumes the State does not take more money away from cities. He said currently about \$9.1 million of the General Fund, 55% of its total, pays for existing police and fire services.

Mayor Rominger inquired about the Police Officer hiring to be effective July 1, 1994.

The City Manager said the Police Chief has some other position he is trying to fill now, and the reality is that he will not be able to get anyone on board until July 1.

Vice Mayor Sandy said he feels this is the most appropriate use of the funds.

On motion of Council Member Sandy, seconded by Council Member Slaven and carried by unanimous vote, the City Council allocated Proposition 172 funds to reinstate one Firefighter position effective February 1, 1994, and one new Police Officer position effective July 1, 1994.

#### LAFCO AGRICULTURAL CONSERVATION POLICY:

Community Development Director Janet Ruggiero outlined for Council suggested changes to the final draft of the Yolo County Local Agency Formation Commission Agricultural Conservation Policy. She said there are some cities that are not too happy with the Policy, but she said the way the City of Woodland has

done its planning and the way the City has done its growth policies the Agricultural Conservation Policy does not impact the City of Woodland. The Policy responds to everything the City has in place, and she said the City's General Plan goes a little further than the Policy.

Council Member Crescione said the definition of prime agricultural land appears quite restrictive.

The Community Development Director said that definition was just recently adopted by the State and is in compliance with the way the existing Policy defines prime agricultural land and what the State has recently done in terms of definition. She said the attempt was not to reinvent the definition but to stay with what is well-known in terms of prime agricultural land. This community was built on prime ag land, and she said the Policy states that if you are going to grow on prime agricultural land you need to do something to insure that the growth is necessary.

On motion of Council Member Sandy, seconded by Council Member Slaven and carried by unanimous vote, the City Council approved transmitting to LAFCO the City's responses to the Agricultural Conservation Policy.

#### BLUE SHIELD/DIAMOND LUMBER INDEMNIFICATION:

The City Manager said last spring the Redevelopment Agency Board entered into a development disposition agreement (DDA) with Panattoni, Johnson and Looz for the construction of the Blue Shield project, and the City Council concurred. In July during the initial construction phase of the project a bunker of oil was discovered on the property which the City had transferred to the Blue Shield project as part of the agreement. There was no provision in the DDA for whose responsibility it was to deal with the clean up and other indemnification questions. On August 17 the Board took action to deal with the cost sharing aspect of the clean up and also addressed two other issues which the developer proposed. One was to have the developer's expenses related to that clean up apply to their \$100,000 obligation for site clean up. Second was to have the City indemnify the developers for any future soil problems that may be found on that transferred property. He said on a 3-2 vote of the Board with Members Crescione, Flory and Sandy voting aye the Board chose to approve the payment of funds towards the clean up but chose not to deal with the indemnification questions. The developer would like the Council to reconsider that issue on indemnification. Rod Johnson was present to answer questions. He said Mr. Johnson is not as interested in having the dollars applied to their obligation as much as he is interested in having the City indemnify them and future owners of the property against any future soil problems that may result from that property that was transferred from the City to Blue Shield. He said the developers would like to resolve the issue because they are in the process of selling interests in the

property.

Rod Johnson of Panattoni, Johnson and Loors said his firm has just completed the JRH project and the Blue Shield project in Woodland. He said they are in the process of putting the finishing touches on the Blue Shield building, and the occupants are very happy with the location and the building. He said he was out of State in negotiations with Southern Pacific on August 17 and was not able to attend the Council meeting when the indemnification issue was discussed. He said when his firm jointly decided with the City that this Southern Pacific/Diamond Lumber site would be advantageous for both the City and the tenant, they entered into negotiations with Southern Pacific. He said those negotiations were not completed because Southern Pacific required that his firm acquire the property on an as is basis, and his firm acknowledged to the City that it could not acquire property on an as is basis. (Council Member Sandy left the meeting at 10:40 p.m. and then returned at 10:43 p.m.) Working with the City/Agency they looked at two alternatives. One was condemning the property but the conclusion was that there were too many unknowns and there was a timing problem and a fear that the tenant would be scared away. The second alternative was to enter into a three-party shared responsibility short term and long term with Southern Pacific, the Agency and his firm. He said they reviewed the development disposition agreement (DDA) and worked with all three parties, and shortly after the transaction transpired in July 1, 1993, they started construction immediately and unfortunately discovered the problem. He said they were surprised the DDA with respect to the property his firm acquired in an exchange from the City was silent regarding responsibility. He said it was their intent in terms of the spirit of the whole DDA that there would be a shared responsibility for the one-half acre site that was exchanged.

Council Member Flory said indemnification was discussed several times. He asked if the agreement was between the City or the Redevelopment Agency and the redevelopers.

The City Manager said the agreement is basically between the Redevelopment Agency and the developers, and the City concurred in that action because the City owned the property.

Council Member Flory asked if Redevelopment Agencies are exempt from toxic land problems.

City Attorney Bob Murphy said there is a provision in redevelopment law that if the Agency acquires property that is already contaminated and goes through certain processes in the acquisition with the various State agencies the property can be certified clean. Then the property can be redeveloped, but he said that is not the situation here.

City Manager Kris Kristensen said Redevelopment Agency Counsel Ed Quinn advised that the issue is still open. The Agency is under no obligation to give this indemnification to the developers in this situation; this is an argument that is still subject to negotiation.

The City Attorney said the Council could ask if the Agency or City is obligated to put that provision in the agreement for the parties on the other side or are they obligated to ask for it.

Council Member Flory said he has a problem with total indemnification; in terms of the developer's contribution of \$100,000 for the entire project that is almost total indemnification.

The City Manager said the way the DDA is written now the developer has a limited \$100,000 responsibility on the Southern Pacific property that was dedicated. Southern Pacific also has a limited indemnification as well. He said the Agency backs that up; the Agency takes the obligation beyond that.

Council Member Flory said he spoke with Mr. Johnson about the property, and they spoke about the Southern Pacific property as well as the north side property where the billboard is. He asked if the Exxon gas station site across the street (north side) was included in the State funding request for cleanup.

The City Manager said they are trying to determine whether or not the gasoline in the monitoring well on the Southern Pacific property that was acquired comes from that gas station property.

Council Member Flory asked if the Agency was eligible for applying for State funds if the gas is coming from that site.

The City Manager said if the gasoline comes from the gas station property his understanding that State money that the gas station has can be used up to \$1,000,000. He said the City was hopeful that that property is the source of the contamination. If for some reason that the property is not the source, and the monies from the State are not sufficient to cover it, the next level of assistance comes from Southern Pacific. Following comes the \$100,000 from the developer, and following that comes the Agency. He said the Council can direct staff to renegotiate the indemnification issue. He said it was an omission; that provision was not addressed in the DDA.

City Attorney Bob Murphy said something that will be of some concern when Council considers its decision, irrespective of what might have happened back when, is that when Phase I was done nothing appeared, but on the property something did appear. He said presumably there is nothing else left, but if there is, what are we indemnifying. He said that would be a concern to him in the

Council's role.

The City Manager said the City received a Phase I analysis for the entire Diamond property indicating that there was no contamination. Obviously, he said a problem was found with the bunker oil. He said subsequent work on the project beyond the bunker did not uncover anything, and he said they have no reason to believe there are any more problems.

**On motion of Council Member Sandy, seconded by Council Member Flory and carried, by unanimous vote, the City Council extended the meeting from 11:00 p.m. until 11:30 p.m.**

The City Manager recommended that Council give staff a chance to meet with Mr. Johnson to work out a proposal and come back to Council.

On motion of Council Member Slaven, seconded by Council Member Sandy and carried by unanimous vote, the City Council authorized the City Manager to renegotiate with Panattoni, Johnson and Looz the request for indemnification on the former City property acquisition for the Blue Shield office project subject to Council approval.

The City Manager said he will report back to Council in 30 days.

COMMUNITY CARE CAR CLAIM WAIVER REQUEST:

The City Manager said on November 10, 1993 one of the Community Care Car vans collided with a City parks maintenance vehicle in a minor traffic accident at the intersection of Fourth Street and Lincoln Avenue. He said there were no injuries but the Care Car van driver was at fault. Subsequently the City vehicle was repaired, and the City sent Community Care Car, Inc. a bill for \$744.50. He said due to insurance reasons the Community Care Car has asked the City to waive the bill. The insurance issues are that the Care Car has recently changed over to a new insurance carrier and unfortunately had three minor accidents in the past year and a third claim would likely cause them to be non-renewed for their policy. If their policy is not renewed they would go to an assigned risk policy which would increase the premiums they would have to pay. He said the Community Care Car, Inc. is a very successful organization and does a lot of public good. He said communities that do not have such an organization have to spend a lot more public dollars to deal with transit issues that the organization takes care of for the community. The City has been very supportive of the Care Car over the years and has donated Transportation Development Act (TDA) dollars to cover their insurance costs. This year their insurance costs were about \$3,400, and the TDA claim for 1993-94 included \$4,000. He said he felt the City should work with Care Car in some way. He suggested two alternatives: (1) waive the bill with the City paying the bill from the City's contingency funds, or (2) tell Community Care Car to

pay the claim themselves and the City will take steps to increase the TDA contribution in a like amount. He said SACOG (Sacramento Area Council of Governments) indicated this is an appropriate use of TDA funds.

On motion of Council Member Slaven, seconded by Council Member Crescione and carried by unanimous vote, the City Council waived the bill and authorized payment of the \$744.50 bill for the vehicle repair from the City's General Fund contingency account.

The City Manager said the City will be suggesting that the drivers participate in some driver education classes which will remind them that those kinds of accidents can happen.

BOARD AND COMMISSION VACANCIES:

The City Council appointed the following Members to interview applicants for various City board and commission vacancies:

Child Care Commission - Council Member Flory  
(two vacancies) Council Member Slaven

Historical Preservation - Council Member Sandy  
Commission (two Council Member Crescione vacancies)

Tree Commission - Mayor Rominger  
(one vacancy) - Council Member Flory

Vice Mayor Sandy suggested that the appointments be made by February 15, 1994.

POLICE PISTOL RANGE:

Council Member Flory requested a report on the Police Pistol Range.

BROWN ACT CHANGES:

Council Member Crescione said it is important to let the City board and commission members know about the Brown Act changes.

The City Manager said there will be an information seminar for the board and commission members presented regarding the Brown Act changes which will take effect April 1, 1994 and conflict of interest. He said information has already been sent to the commissioners.

ORDINANCE NO. 1240 - TECHNICAL CHANGES TO ZONING ORDINANCE:

On motion of Council Member Sandy, seconded by Council Member Flory and carried by unanimous vote, the City Council adopted and read by title only Ordinance No. 1240 amending Zoning Ordinance concerning setbacks, lot coverage, accessory buildings, R-2 duplex zone uses, multi-family minimum density requirements and off-street parking requirements.

ADJOURNMENT:

At 11:15 p.m. the Council meeting was adjourned.

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City Clerk of the City of Woodland