

Sec. 2-3-4. - Disposition of property south of Bayfront/Main Streets.

Real property owned by the city or by the Pensacola Community Redevelopment Agency, which is located south of Bayfront Parkway/Main Street between the Pensacola Bay Bridge and A Street shall not be declared surplus or disposed of by sale of such property, in the absence of any exigent circumstance expressly declared to exist by the city council, but such property may be leased or otherwise be put to beneficial use in the best public interests of the city.

(Ord. No. 14-15, § 1, 6-18-15)

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EXIGENT CIRCUMSTANCES

Emergency conditions. 'Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.' *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

Exigent circumstances may excuse failure to make an announcement or to wait for the occupant to refuse entry. *United States v. Mendonsa*, 989 F. 2d 366, 370 (9th Cir. 1993). The existence of exigent circumstances is a mixed question of fact and law reviewed de novo. *Id.*

A search is reasonable, and a search warrant is not required, if all of the circumstances known to the officer at the time, would cause a reasonable person to believe that entry or search was necessary to prevent physical harm to the officer or other persons/the destruction or concealment of evidence/the escape of a suspect, and if there was insufficient time to get a search warrant.

The federal 'knock and announce' statute, 18 U.S.C. S 3109. Section 3109 requires 'police officers [to] knock, announce and be refused entry before they break into a residence. Exigent circumstances excuse noncompliance.' *United States v. Turner*, 926 F.2d 883, 886 (9th Cir.), cert. denied, 502 U.S. 830 (1991). Specifically, the court found that immediate entry was necessary 'for [the officers'] protection and the protection of others inside as well as to prevent the destruction of any drugs in defendant's possession or in the home.'

A simultaneous, no-refusal entry is permissible if at least 'mild exigent circumstances' were present. See *United States v. McConney*, 728 F.2d 1195, 1206 (9th Cir.) (en banc) (mild exigency is sufficient to justify simultaneous knock/announce and entry if entry does not require physical destruction of property), cert. denied, 469 U.S. 824 (1984); *United States v. Whitney*, 633 F.2d 902, 909 (9th Cir.'80) ('only a mild indication of exigency is required to excuse noncompliance with the 'refusal of admittance' requirement of section 3109'), cert. denied, 450 U.S. 1004 (1981).

When police have a reasonable and sincere fear that someone is in jeopardy and contraband might be destroyed, this usually constitutes sufficient exigency to justify a simultaneous, no-refusal entry. See *McConney*, 728 F.2d at 1206; *Whitney*, 633 F.2d at 909-10.

Exigencies created by the government cannot be the basis for excusing compliance with the warrant requirement. See, e.g., *United States v. Hackett*, 638 F.2d 1179, 1183-85 (9th Cir.'80), cert. denied, 450 U.S. 1001 (1981); *United States v. Curran*, 498 F.2d 30, 34 (9th Cir.'74). The rule has been applied only in cases where exigencies arose 'because of unreasonable and deliberate [conduct] by officers,' in which the officers 'consciously established the condition which the government now points to as an exigent circumstance.' See, e.g., *Curran*, 498 F.2d at 34 (emphasis added); *Hackett*, 638 F.2d at 1183; *United States v. Calhoun*, 542 F.2d 1094, 1102-03 (9th

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Cir.'76), cert. denied, 429 U.S. 1064 (1977). an honest miscommunication is not a case where the government purposely tried to circumvent the requirements of section 3109. Cf. Hackett, 638 F.2d at 1184-85; Curran, 498 F.2d at 33-34.

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## Item 18-00241 – Settlement Proposal

Considerations without discussing the Merits of the Item:

- Recommendation is asking City Council to approve at least seven (7) items: with one (1) vote

- Declare Exigent Circumstance for South Palafox Property
- Declare Surplus South Palafox Property
- Declare Exigent Circumstance for Pitt Slip property
- Declare Surplus Pitt Slip property
- Enter into a lease agreement South Palafox property
- Enter into a Purchase/Sales agreement Pitt Slip property
- Accept agreement satisfying payment/release of Prevailing Party Attorneys' Fees in Fish House Lawsuit

- City Code 2-3-4 – Disposition of property south of Bayfront / Main Streets

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- It would appear that each request for the declaration of surplus would have to be accompanied by an expressly declared statement of exigent circumstance... in other words...what is the exigent circumstance that exists.
- Exigent Circumstance in its simplest form means, “A situation or circumstance that requires immediate action.”

- Surplus Property – prior to reaching the threshold of declaring property Surplus, 2-3-4 must be applied. Property in the given location cannot be declared surplus until there is a finding and declaration that Exigent Circumstances exist

- Sale of Property...no sale of property in the given location can take place until there is a finding and declaration that Exigent Circumstances exist

Finally, with the number of questions and concerns that Council has...is it in the best interest of the City to discuss a proposed settlement agreement in an Open Meeting without possibly damaging the City's negotiating position.

## **SUMMARY**

- Number of actions requested in one recommendation
- No indication of WHAT the exigent circumstance is for either property
- City Code 2-3-4 ... what was its legislative intent...
- Cannot declare surplus without clearing hurdle of 2-3-4
- Is it in the best interest of the City to openly discuss a proposed settlement agreement without damaging future negotiation position