

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: POLICE

AGENDA DATE: August 26, 2008

CONTACT PERSON/PHONE: ASSISTANT CHIEF TOM WHITTEN/ 564-7304

DISTRICT(S) AFFECTED: All

SUBJECT: Public Hearing to take comment on the need to continue the City of El Paso's juvenile curfew ordinance, Sections 10.20.010 through 10.20.054, of the City Code, as required by Section 370.002, Texas Local Govt Code, and review, discussion and action by the City Council concerning the ordinance.

BACKGROUND / DISCUSSION: In or about 1996, the City Council adopted a curfew ordinance. See Chapter 10.20 *et. seq.*, El Paso City Code. Pursuant to said ordinance and the Texas Local Government Code, said curfew ordinance must be reviewed every three (3) years by City Council to determine if the curfew ordinance accomplishes its intended purpose. The review of the ordinance shall focus on the effects of juvenile curfew on the community and on the problems the ordinance was intended remedy. The curfew report prepared by the Police Department outlines enforcement statistics and juvenile crime statistics. The report recommends continuation of the ordinance without modification.

PRIOR COUNCIL ACTION: A previous curfew ordinance review was conducted on or about August 30, 2005.

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

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RESOLUTION

WHEREAS, the City Council adopted a juvenile curfew ordinance in or about 1996; and

WHEREAS, Texas Local Government Code Section 370.002 requires home-rule municipalities to review their juvenile curfew ordinances every three years to determine the effects on the community and on problems the ordinance was intended to remedy; and

WHEREAS, the City Council conducted its last review of the City's juvenile curfew ordinance in or about August 2005 and voted to continue said ordinance; and

WHEREAS, City Council must review the juvenile curfew ordinance in August 2008 in accordance with the Texas Local Government Code;

WHEREAS, the City Council has taken public comment at a public hearing held on August 26, 2008, regarding the continued need for the juvenile curfew ordinance.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

- (1) That the City Council has reviewed the effects of the City's juvenile curfew ordinance, Sections 10.20.010 through 10.20.054 of the City Code, on the community and its effect on juveniles, crime and crime victims, in accordance with the Texas Local Government Code.
- (2) That the City Council approves the report presented by the El Paso Police Department regarding the effects of the curfew and its impact on juveniles, crime and crime victims.
- (3) That the City Council finds that the juvenile curfew ordinance should continue in its present form.

Adopted this 26th day of August 2008.

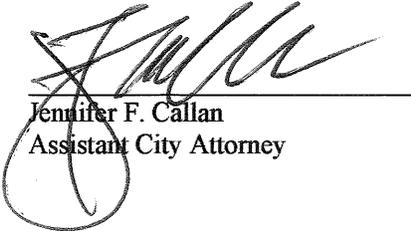
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Jennifer F. Callan
Assistant City Attorney

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LOCAL GOVERNMENT CODE

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CHAPTER 370. MISCELLANEOUS PROVISIONS RELATING TO MUNICIPAL AND
COUNTY HEALTH AND PUBLIC SAFETY

§ 370.001. HEALTH CONTRACTS IN BORDER MUNICIPALITIES OR COUNTIES. The governing body of a municipality or county that has a boundary that is contiguous with the border between this state and the Republic of Mexico may contract with a border municipality or state in the Republic of Mexico to provide or receive health services.

Added by Acts 1991, 72nd Leg., ch. 769, § 1, eff. Aug. 26, 1991.

§ 370.002. REVIEW OF JUVENILE CURFEW ORDER OR ORDINANCE. (a) Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:

- (1) review the ordinance or order's effects on the community and on problems the ordinance or order was intended to remedy;
- (2) conduct public hearings on the need to continue the ordinance or order; and
- (3) abolish, continue, or modify the ordinance or order.

(b) Failure to act in accordance with Subsections (a)(1)-(3) shall cause the ordinance or order to expire.

Added by Acts 1995, 74th Leg., ch. 262, § 96, eff. May 31, 1995.

§ 370.003. MUNICIPAL OR COUNTY POLICY REGARDING ENFORCEMENT OF DRUG LAWS. The governing body of a municipality, the commissioners court of a county, or a sheriff, municipal police department, municipal attorney, county attorney, district attorney, or criminal district attorney may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.

Added by Acts 1997, 75th Leg., ch. 971, § 1, eff. Sept. 1, 1997.

§ 370.002. REVIEW OF JUVENILE CURFEW ORDER OR ORDINANCE.

(a) Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:

(1) review the ordinance or order's effects on the community
and on

problems the ordinance or order was intended to remedy;

(2) conduct public hearings on the need to continue the
ordinance or order;

and

(3) abolish, continue, or modify the ordinance or order.

(b) Failure to act in accordance with Subsections (a)(1)-(3) shall cause the ordinance or order to expire.

Added by Acts 1995, 74th Leg., ch. 262, § 96, eff. May 31, 1995.

Title 10 PUBLIC PEACE, MORALS AND WELFARE

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Chapter 10.20 OFFENSES BY OR AGAINST MINORS10.20.010 Curfew--Definitions.10.20.020 Curfew--Offenses.10.20.030 Curfew--Affirmative defenses.10.20.040 Curfew--Enforcement.10.20.050 Curfew--Violation--Penalty.10.20.052 Curfew--Construction.10.20.054 Curfew--Review of ordinance.10.20.060 Sale of glue--Glue sniffing prohibited.**10.20.010 Curfew--Definitions.**

In this chapter:

"Chief of police" means the chief of police of the city or a designated representative.

"Curfew hours" means the period beginning at eleven p.m. and ending at six a.m. of the following day. The time shall be determined by the prevailing standard of time, whether Mountain Standard Time or Mountain Daylight Savings time, generally observed at that hour by the public in El Paso. The time then observed in the El Paso police department's communications divisions shall be prima facie evidence of the true and correct time.

"Direct route" means the shortest path of travel through a public place to reach a final destination without any detour or stop along the way.

"Emergency" means, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

"Establishment" means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

"Minor" means a person who is under the age of seventeen years of age.

"Parent" means a person who is:

1. A natural or adoptive parent or step-parent of the minor;
2. A court-appointed guardian of the minor or the public or private agency with whom the minor has been placed by a court; or
3. A custodian, at least eighteen years of age, and with whom the minor resides.

"Public place" means any street, alley, highway, sidewalk, driveway, yard, playground, park, plaza, building or other place used by or open to the public. The term "street" includes the legal right-of-way, including but not limited to the traffic lanes, curb, sidewalk, whether paved or unpaved, parkway and any grass plots or other grounds found within the legal right-of-way of a street.

"Remain" means to:

1. Linger, stop, or stay for any length of time, or to travel or move upon a street; or
2. Fail to leave premises when requested to do so by a police officer or the owner, operator or other person in control of the premises.

"Special curfew area" means the areas contained within the following boundaries:

Special Curfew Area "A"

1. Beginning at the intersection of Father Rahm Avenue and Santa Fe Street;
2. Proceeding south on Santa Fe Street to Loop 375 (Border Highway);
3. Proceeding east on Loop 375 (Border Highway) to Oregon Street;
4. Proceeding north on Oregon Street to Father Rahm Avenue; and

5. West on Father Rahm Avenue to the point of beginning.

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Special curfew Area "B"

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1. Beginning at the intersection of Mesa Street and Seventh Avenue;

2. Proceeding south on Mesa Street to Eighth Street;

3. Proceeding east on Eighth Street to Kansas Street;

4. Proceeding north on Kansas Street to Seventh Avenue; and

5. West on Seventh Avenue to the point of the beginning.

The areas are more fully described by a map filed with the city clerk.

"Special curfew hours" means the period beginning at seven p.m. and ending at six a.m. of the following day.

The time shall be determined by the prevailing standard of time, whether Mountain Standard Time or Mountain Daylight Savings time, generally observed at that hour by the public in El Paso. The time then observed in the El Paso police department's communications divisions shall be prima facie evidence of the true and correct time. (Ord. 16309 § 1, 2006; Ord. 12738 § 1, 1996; Ord. 10730 § 1, 1991; prior code § 15-15)

10.20.020 Curfew--Offenses.

A. A minor commits an offense if he remains in any public place or on the premises of any establishment within the city limits during curfew hours.

B. A minor commits an offense if he remains in any public place in a special curfew area or on the premises of any establishment within a special curfew area during special curfew hours.

C. A parent of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place within the city limits during curfew hours.

D. A parent of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place within a special curfew area during special curfew hours.

E. A parent of a minor commits an offense if he knowingly fails to respond within two hours of receipt of any notification by a law enforcement officer to take custody of a minor taken into custody for violation of this section, unless reasonably hindered from doing so. (Ord. 16309 § 2, 2006; Ord. 12738 § 2, 1996; Ord. 10730 § 2, 1991; prior code § 15-16)

10.20.030 Curfew--Affirmative defenses.

A. It is a defense to prosecution under Section 10.20.020 that the minor was:

1. Accompanied by the minor's parent;

2. On an errand at the direction of the minor's parent, was using a direct route, and was carrying a written communication signed by the parent stating a brief description of the errand and that the named minor has consent to perform such errand;

3. In a motor vehicle engaged in interstate travel, beginning, ending or passing through El Paso;

4. Engaged in an employment activity, including but not limited to newspaper delivery, and was using a direct route;

5. Involved in an emergency;

6. On the driveway or yard of the minor's residence or on the sidewalk abutting the minor's residence;

7. On the sidewalk abutting the residence of a next-door neighbor if the neighbor did not complain to the police officer about the minor's presence;

8. Attending an official school, civic or religious activity or returning home by a direct route from an official school, civic or religious activity;

9. Attending or traveling directly to or from an activity involving the exercise of First Amendment rights protected by the United States Constitution, including the free exercise of religion, freedom of speech, and the right of assembly;

10. Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code; or

11. Accompanied by a person at least twenty-one years of age, and the minor was carrying a written communication signed by the parent stating the name of the person who is at least twenty-one years of age and accompanying the minor and that the named minor has consent to be in the company of that named person.

B. Each of the foregoing defenses, and their several limitations, are severable, as hereinafter provided but reemphasized here. (Ord. 12738 § 3, 1996; Ord. 10730 § 3, 1991; prior code § 15-17)

10.20.040 Curfew--Enforcement.

A. A police officer, upon finding a minor in violation of Section 10.20.020 shall take the necessary steps to determine whether the minor is remaining in a public place in the city limits in violation of Section 10.20.020 and whether any defenses under Section 10.20.030 may apply to the actions or activities of the minor. If the officer has probable cause to believe that the minor is in violation of Section 10.20.020, the officer may take appropriate enforcement action against the minor in accordance with the applicable provisions of the Juvenile Justice Code, the Texas Penal Code, and this chapter.

B. If a minor is taken into custody under this section, the officer shall, without unnecessary delay:

1. Release the minor to the minor's parent, guardian or custodian;
2. Take the minor before a municipal court to answer the charge; or
3. Take the minor to a place designated by the chief of police as a juvenile curfew processing office.

C. When a minor is issued a citation or taken into custody for a violation of Section 10.20.020, the police department may, by certified mail return receipt requested, notify a parent of the minor that the minor has violated Section 10.20.020 and include a warning that any subsequent violation may result in prosecution of the minor and the parent under this section. (Ord. 12738 § 4, 1996; Ord. 10730 § 4, 1991; prior code § 15-18)

10.20.050 Curfew--Violation--Penalty.

A. Any minor who violates Section 10.20.020 of this code shall be guilty of a misdemeanor and shall be punished by a fine as provided in Sections 1.08.010 through 1.08.030 and may be subject to appropriate action by a juvenile court in accordance with applicable provisions of the Juvenile Justice Code, the Texas Penal Code, and this chapter.

B. A parent of a minor who violates any provision of Section 10.20.020 shall be guilty of a misdemeanor and shall be punished by a fine as provided in Sections 1.08.010 through 1.08.030 of this code. (Ord. 12738 § 5, 1996; Ord. 10730 § 5, 1991; prior code § 15-19)

10.20.052 Curfew--Construction.

A. Severability is intended throughout and within the provisions of the curfew ordinance. If any provision, including inter alia any exception, defense, subsection, part, phrase, term or word, or the application thereof to any person or circumstance is held invalid or unconstitutional by valid judgment or decree of a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the ordinance codified in this chapter, and such remaining portions shall remain in full force and effect.

B. It is intended that the curfew ordinance be held inapplicable in any cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given. The city council does not intend to violate the Constitution of the state or the Constitution of the United States of America, and does not intend an interpretation of the ordinance or an application thereof which is absurd, impossible or unreasonable. (Ord. 12738 § 6, 1996; Ord. 10730 § 6, 1991)

10.20.054 Curfew--Review of ordinance.

The city council finds that the review of this chapter done by the city immediately prior to and in conjunction with the passage of the readoption and amendments made herein satisfies the requirements set forth in Section 370.002, Texas Local Govt Code, for certain required reviews of curfew ordinances by home-rule municipalities. The dates for the statutorily required ordinance review every third year thereafter shall be based upon this readoption. (Ord. 12738 § 7, 1996; Ord. 10730 § 7, 1991)

10.20.060 Sale of glue--Glue sniffing prohibited.

A. No person shall sell, offer for sale, deliver or give to any person under the age of seventeen years, except to his brother, sister, son, daughter or legal ward, any glue, cement, paint, spray paint, paint thinner, lacquer, commercial solvent, or similar substance, containing one or more volatile solvents of one of the following generic types: aromatics, alcohols, ketones, esters, ethers, halogenated hydrocarbons, isocyanates, tetrahydro furans, diethyl sulfates, alkylonitriles and ethelene oxides.

B. The provisions of subsection A of this section shall not apply when one of the substances named therein, or a similar substance, is sold, offered for sale, delivered or given simultaneously with and as part of a kit used for the construction of model airplanes, model boats, model automobiles, model trains, or other similar models.

C. No person shall smell, sniff or inhale any glue, cement, paint, spray paint, paint thinner, lacquer, commercial

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solvent, or similar substance containing one or more volatile solvents of one of the generic types named in subsection A of this section, for the purpose of intoxication, or in such a way that intoxication results. "Intoxication" as used in this section means a condition in which the mental capacity is impaired, or the mental or physical effects of the toxic substance can be detected by ordinary observation. (Prior code § 15-20)

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EPD

City of El Paso, Texas Juvenile Curfew Ordinance Review



El Paso Police Department
September 2008



Chief Gregory K. Allen



EPD

Purpose

- The City of El Paso established a curfew ordinance in October 1997.
- Every third year, the City Council shall:
 - Review the ordinance's effects on the community and on the problems the ordinance was intended to remedy;
 - Conduct public hearings on the need to continue the ordinance; and
 - Abolish, continue or modify the ordinance
 - Failure by the City Council to act shall cause the ordinance to expire



➤ Source: Local Government Code § 370.002

EPPO

Overview

- The ordinance is well written and meets the needs of the community and the Department
- The ordinance has addressed the areas for which it was intended and is:
 - An effective strategy that reduces victimization
 - An effective tool used to investigate criminal activity by juvenile offenders
 - Cost effective to employ and enforce



EPD

Curfew Ordinance Highlights

- Applies to juveniles aged 10-16
- The curfew hours are 11:00 p.m. until 6:00 a.m. each day
- The time as observed in the El Paso Police Department's Communications Division shall be prima facie evidence of the true and correct time



- El Paso City Ordinance 10.20.010 Curfew-Definitions

EPPO

Curfew Enforcement

Citations Issued 2005-2007

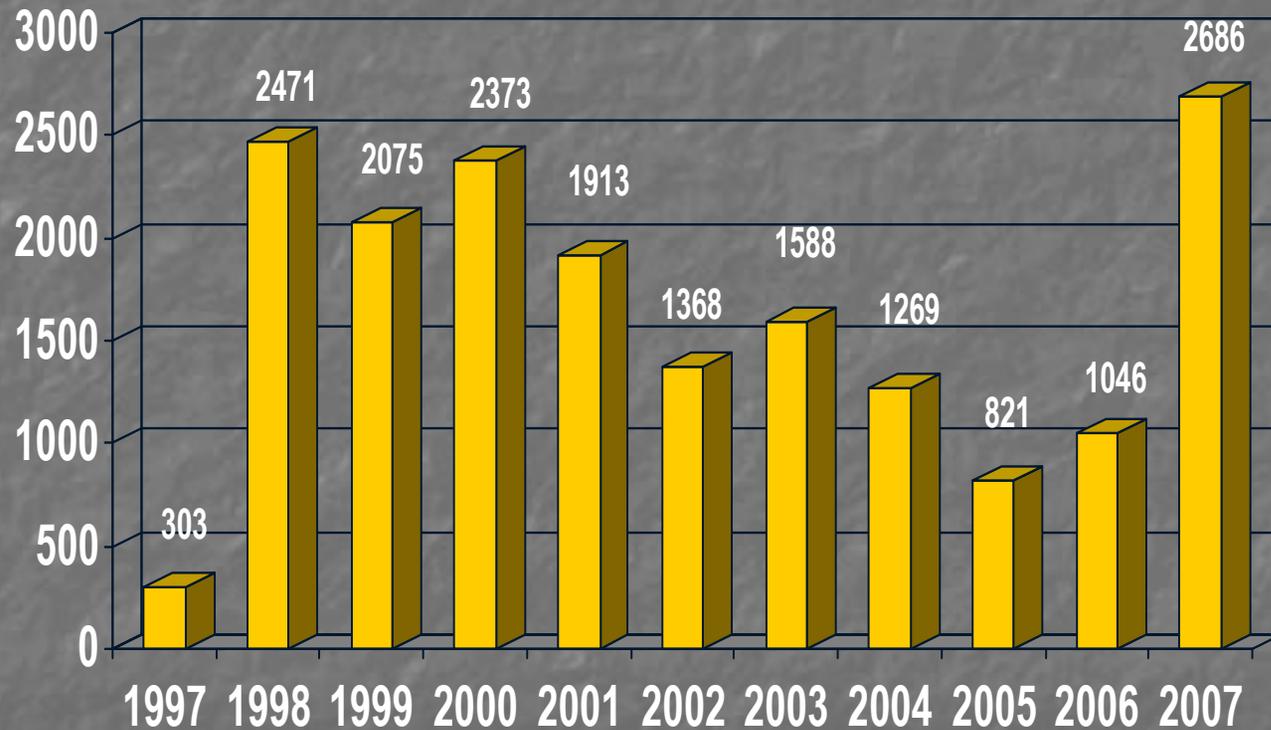
- 821 citations issued in 2005
- 1,046 citations were issued in 2006
- 2,686 citations issued in 2007



EPPO

Citation History

Annual Curfew Citations Since 1997

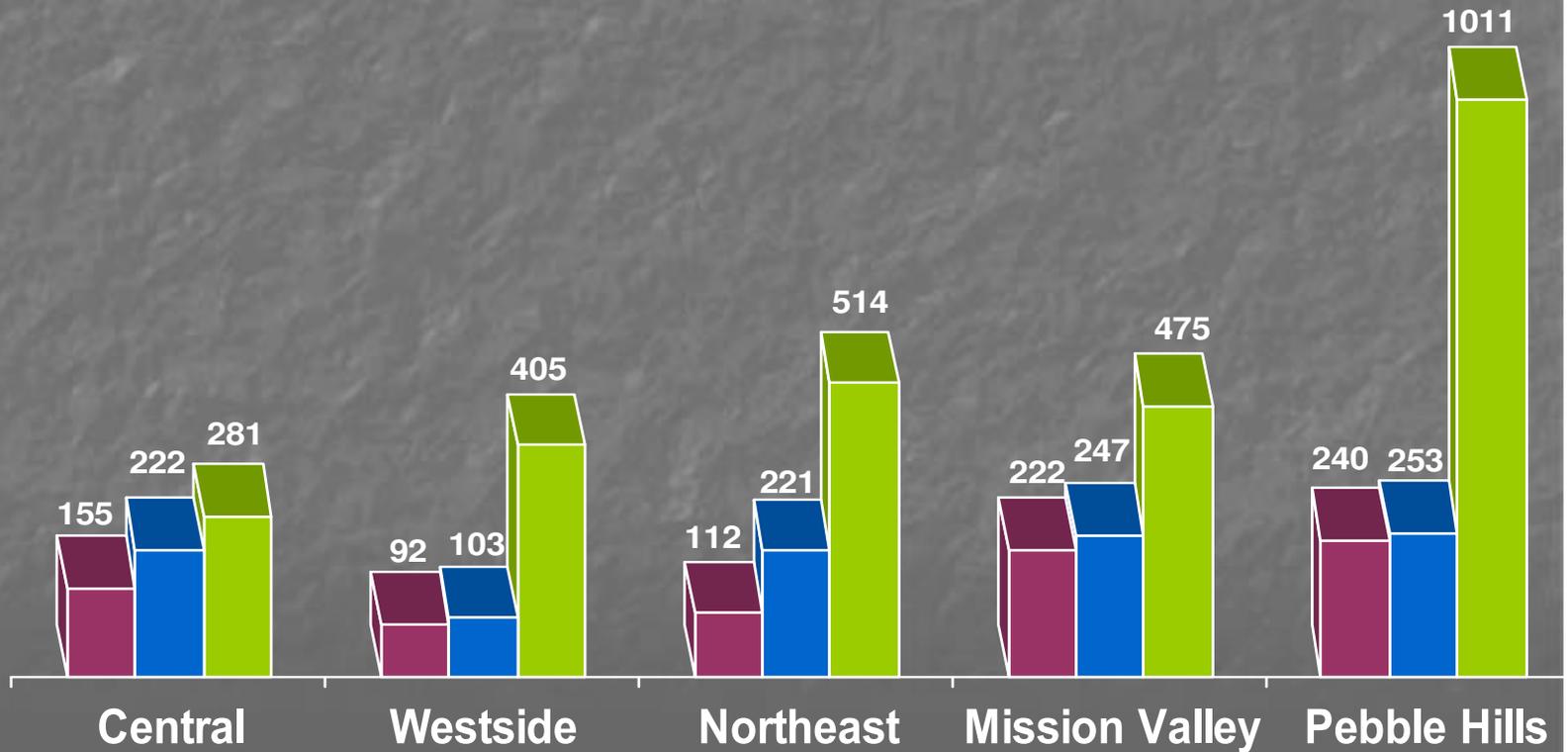


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Command Comparisons

Citations by Regional Command

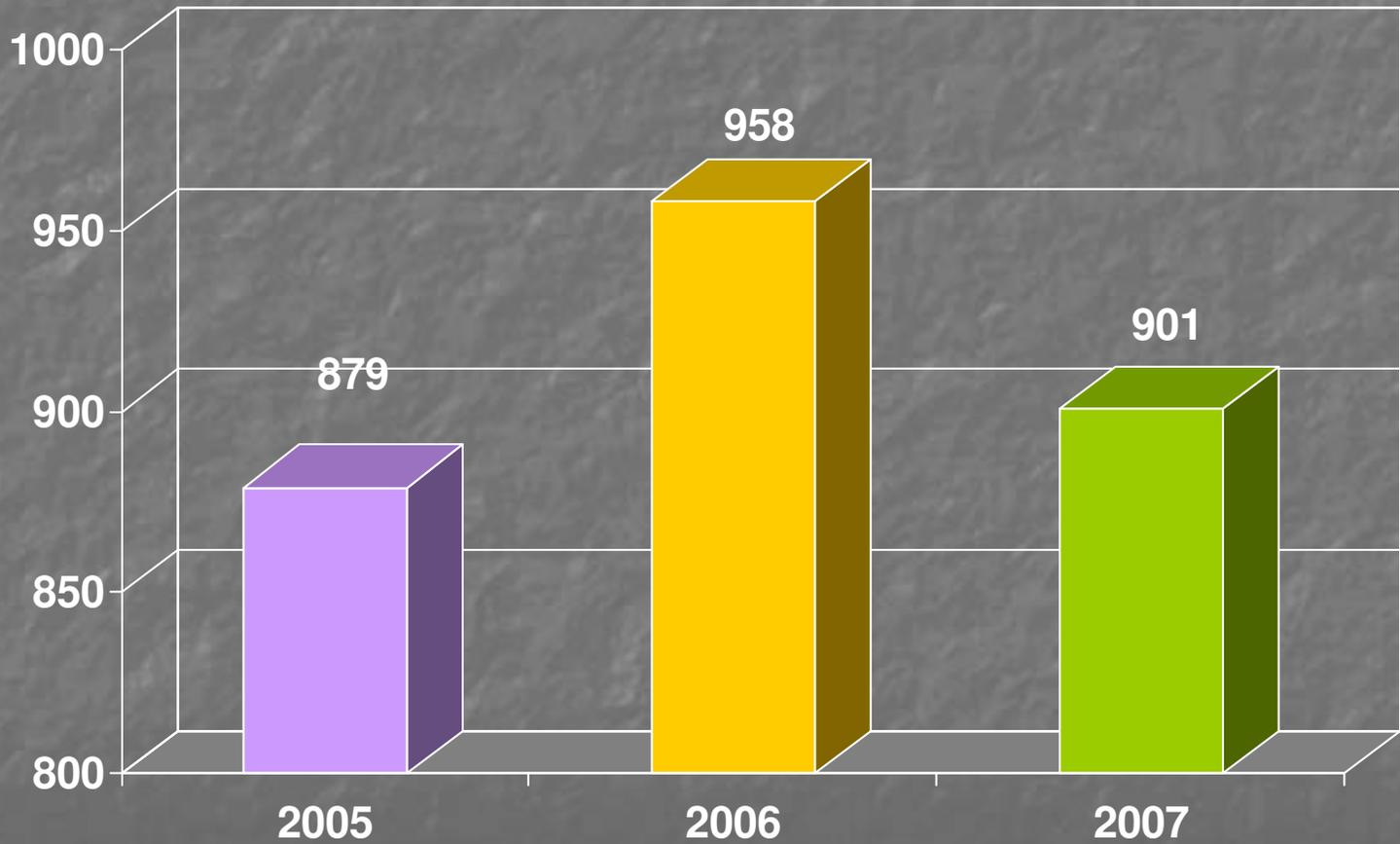
2005 2006 2007



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Juvenile Case Trends

Police Cases Involving Juveniles



Source: El Paso Police Departments I-Leads Records Management System

EPPO

The Ordinance as a Tool

- The ordinance is employed as a crime prevention tool for the law enforcement officer
- The curfew provides an investigative tool that helps in the analysis of developing crime trends and patterns
- Juvenile crime has decreased substantially over the past three years in part because of the availability of El Paso's curfew ordinance



EPD

Conclusions and Recommendation

- Even with an estimated increase in population of nearly 16,000 since July 2005, the El Paso Police Department has seen an overall reduction of juvenile crime that can be largely attributed to the curfew ordinance. 2007 marked the second lowest number of police cases involving juveniles in six years.
- The curfew ordinance serves as an early intervention program that addresses risk factors, and strengthens our community's families.
- The El Paso Police Department recommends renewal of the curfew ordinance and continued enforcement.



Source: U.S. Census Bureau/Annual Estimates