

DALLAS DEVELOPMENT CODE AMENDMENT**FILE NO. DCA 156-009**

Late Hours Overlay**Planner: Diana Lowrance****REQUEST:**

Consideration of amending the Dallas Development Code to create a new zoning overlay called, "Late Hours Overlay".

BACKGROUND:

On August 8, 2016 the Quality of Life & Environment Committee was briefed and discussed the standards and regulations for late hour establishments in Planned Development District No. 842 (Lower Greenville) and directed staff to proceed to the Zoning Ordinance Advisory Committee. Refer to the Quality of Life & Environment Committee Meeting Record for the August 8, 2016 meeting, below.

On November 29, 2016, the Sustainable Development & Construction Department held a public meeting at the Erik Jonsson Central Library to get feedback from residents, property owners, and bar & restaurants owners regarding the issues related to parking for retail and personal service uses utilizing outdoor areas and a potential late hours overlay. Approximately 321 people attended, predominately from the hospitality industry.

GENERAL INFO/STAFF ANALYSIS:

An overlay is a zoning tool which supplements the existing zoning district classification by establishing additional regulations or modifying existing regulations. Currently, the Dallas Development Code has seven types of overlays: (1) the Historic Overlay (which was established to preserve places of historical, cultural, or architectural importance and significance); (2) the Institutional Overlay (which was established to promote cultural, educational, and medical institutions, and enhance their benefit to the community while protecting adjacent property); (3) the Modified Delta Overlay (used in areas where continued use of the delta theory is not justified); (4) the Neighborhood Stabilization Overlay (used to preserve single family neighborhoods by imposing neighborhood-specific yard, lot, and space regulations that reflect the existing character of the neighborhood); (5) the Historic Building Demolition Delay Overlay (which was established to allow a review period for the demolition of buildings older than 50 years that met certain criteria); (6) the D and D-1 Liquor Control Overlay (which only applies to D and D-1 Liquor Control Overlay Districts that were enacted before June 11, 1987, and was established to control the sale or serving of alcoholic beverages); and (7) the Parking Management Overlay District (which was established to allow City Council to impose conditions to ensure the adequate provision and efficient management of parking). Parking Management Overlay Districts may only be established within WMU - Walkable Urban Mixed Use or WR - Walkable Urban Residential districts.

Currently, neither Chapter 51 nor Chapter 51A of the Dallas Development Code defines or has specific regulations for establishments that operate late into the early morning hours. Some examples of land uses that might be open for business between 12 a.m. and 6 a.m. are:

<u>Chapter 51A Uses</u>	<u>Chapter 51 Uses</u>
Alcoholic beverage establishments	Alcoholic beverage establishments
Commercial amusement (inside)	Inside Commercial Amusement
General merchandise or food stores (i.e., convenience stores, supermarkets, and drug stores)	Retail food store
	Clothing store
	Drug store
Personal service uses (i.e., tattoo parlors)	Personal service uses
Restaurants (with-out drive-in or drive-through service)	Restaurant without drive-in service
Restaurants (with drive-in or drive-through service)	Drive-in restaurant

Planned Development District No. 842, passed by City Council on January 26, 2011, regulates establishments that operate late into the early morning hours on Lower Greenville. The purpose of the PD was to ensure the compatibility of certain retail and personal service uses with adjacent residential neighborhoods. The PD defined a new use, "Late Hour Establishment," as a retail and personal service use that operates between 12 a.m. (midnight) and 6 a.m.

ISSUES:

Different areas of the city have experienced impacts from establishments that operate late at night and into the early morning hours. Many of these establishments are in close proximity, if not adjacent to, residential neighborhoods. The concentration and proximity of these establishments may become a nuisance to nearby residential neighborhoods. Some issues potentially related to these uses are noise, crime, trash, and property damage, etc.

STAFF PROPOSAL:

The purpose of a Late Hours Overlay is to ensure the compatibility retail and personal service uses with adjacent residential neighborhoods.

General provisions.

- (1) The City Plan Commission or City Council may initiate a "Late Hours Overlay District" following the procedure in Section 51A-4.701, "Zoning Amendments," which is the authorization of a public hearing by the City Plan Commission or City Council.
- (2) A late hours overlay may only be placed on an area that is zoned nonresidential or mixed use and developed primarily with retail and personal service uses. The area must be physically contiguous and be no less than a blockface in area. A Blockface means the linear distance of lots along one

side of a street between the two nearest intersecting streets. If a street dead ends, the terminus of the dead end will be treated as an intersecting street.

Definitions and Interpretations.

- (1) Unless otherwise stated, the definitions and interpretations in Chapter 51A or Chapter 51, as applicable, would apply to the overlay.
- (2) However, in the overlay, a **Late-Hours Establishment** would mean a retail and personal service use in Chapter 51A and comparable uses in Chapter 51 that operates, offers services to the public, and/or has customers remaining in the establishment between 12 a.m. (midnight) and 6 a.m.
- (3) All other requirements in the Dallas Development Code and City Code in addition to applicable state and federal regulations would apply to the district

Main Uses Permitted.

- (1) The main uses permitted in any proposed overlay district would depend on the existing zoning, subject to the same rules and conditions applicable to those districts, as set forth in Chapter 51 or 51A of the Dallas Development Code, as applicable.
- (2) However, the following use would be permitted only by SUP:

--Late-hours establishment

Additional provisions.

- (1) Except for late-hour establishments operating under a valid specific use permit, approved subject to the factors listed herein, all services for the public must be stopped and all customers must be removed from the establishment between 12 a.m. (midnight) and 6 a.m.

Specific Use Permits in General.

SUPs provide a means for developing certain uses in a manner in which a specific use will be consistent with the character of the neighborhood. Each SUP application must be evaluated as to its probable effect on the adjacent property and the community welfare and may be approved or denied as the findings indicate appropriate. Dallas Development Code Chapter 51A, Section 51A-4.219 provides the general findings the City Plan Commission and City Council must consider when approving a Specific Use Permit (SUP).

Specifically, the City Council shall not grant an SUP for a use except upon a finding that the use will: (a) complement or be compatible with the surrounding uses and community facilities; (b) contribute to, enhance, or promote the welfare of the area of request and adjacent properties; (c) not be detrimental to the public health, safety, or general welfare; and (d) conform in all other respects to all applicable zoning regulations and standards. The regulations in this chapter have been established in accordance with a comprehensive plan for the purpose of promoting the health, safety, morals, and general welfare of the city.

Additional SUP Requirements for the Late Hours Overlay.

- (1) Factors to be considered for a specific use permit for a Late-Hour Establishment. The City Plan Commission and City Council shall consider the following additional factors when making the findings required by Section 51A-4.219 (a)(3):
- (i) The number of citations issued by police to patrons of the establishment;
 - (ii) The number of citations issued by police for noise ordinance violations by the establishment;
 - (iii) The number of arrests for public intoxication or disorderly conduct associated with the establishment;
 - (iv) The number of Texas Alcoholic Beverage Code violations of the establishment; and
 - (v) The number of violent crimes associated with the establishment, with emphasis on violent crimes originating inside the establishment.

APPENDIX:

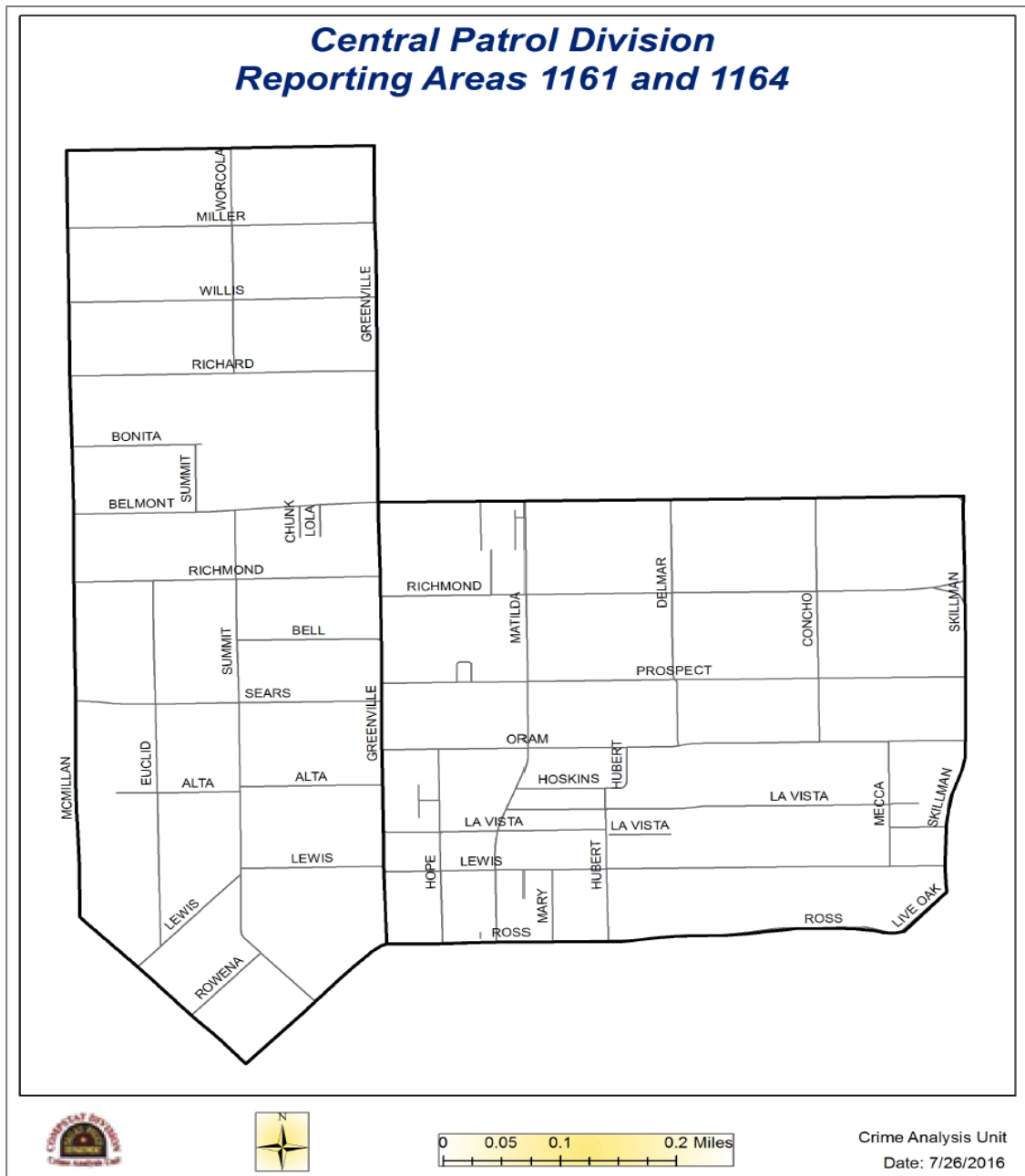
Meeting Record from Quality of Life & Environment Committee Meeting on August 8, 2016.

Quality of Life & Environment Committee Meeting Record					
Meeting Date:	August 8, 2016	Convened:	9:09 AM	Adjourned:	10:42 AM
<u>Members Present:</u>	Sandy Greyson (Chair) Tiffinni A. Young (Vice-Chair) Rickey D. Callahan Mark Clayton Philip T. Kingston B. Adam McGough	<u>Members Absent:</u>		<u>Briefing Presenters</u>	Theresa O'Donnell Chief Resiliency Officer
		<u>Council Members Present:</u>			David Cossum Director, Sustainable Development and Construction
					Neva Dean Interim Assistant Director Sustainable Development and Construction

3. <u>Late Hours Overlay</u>			
Presenter(s): David Cossum and Neva Dean			
Information Only:	<input type="checkbox"/>		
The Department of Sustainable Development and Construction briefed the Committee on the option of creating a new zoning overlay regulating late hour establishments.			
Action Taken/Committee Recommendation(s):	A motion was made to direct staff to pursue the code amendment process for the purpose of exploring a late night hours overlay and for the item to move to the Zoning Ordinance Committee for review.		
Motion made by: Phillip T. Kingston	Motion seconded by: Mark Clayton		
Item passed unanimously:	<input checked="" type="checkbox"/>	Item passed on a divided vote:	<input type="checkbox"/>
Item failed unanimously:	<input type="checkbox"/>	Item failed on a divided vote:	<input type="checkbox"/>

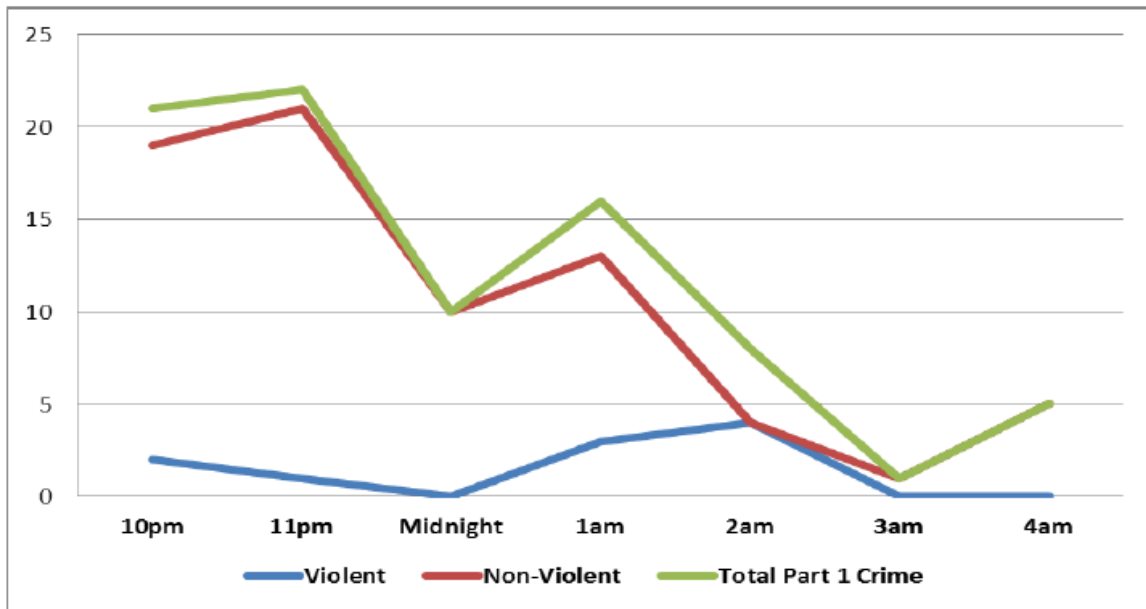
The next six pages include a map of Reporting Areas 1161 and 1164 and crime data for calendar years 2011, 2012, 2013, 2014 and 2015. This information was provided by the Dallas Police Department's Central Patrol Division. The reporting areas include the area of the city covered by Planned Development District No. 842 (Lower Greenville). Additionally, following table was created by staff to summarize violent and non-violent crime in the reporting areas during the time period from midnight to 4 a.m.

Total Violent/Non-Violent Crime in Reporting Areas 1161 and 1164 from Midnight to 4 a.m. (By Calendar Year)					
YEAR	2011	2012	2013	2014	2015
CRIME TOTALS	40	34	33	17	29



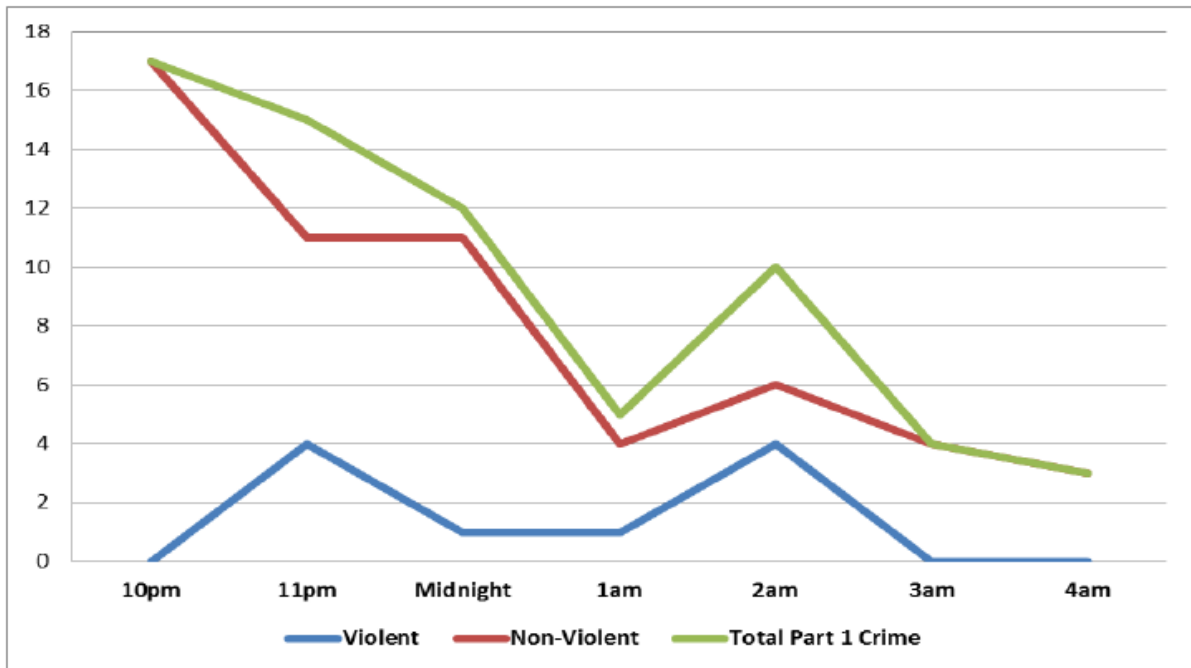
Central Patrol Division
Reporting Areas 1161 and 1164
Part 1 Offenses Year to Date, January 1 - December 31, 2011

Offense	10pm	11pm	Midnight	1am	2am	3am	4am	Total
AGG ASSAULT				1	2			3
BURGLARY-BUSINESS	1			2		1	4	8
BURGLARY-RESIDENCE	1	1						2
MURDER								0
OTHER THEFTS	2		1	1	1			5
RAPE				1				1
ROBBERY-BUSINESS								0
ROBBERY-INDIVIDUAL	2	1		1	2			6
THEFT/BMV	11	13	7	9	1		1	42
THEFT/SHOPLIFT								0
UUMV	4	7	2	1	2			16
Total	21	22	10	16	8	1	5	83
Violent	2	1		3	4			10
Non-Violent	19	21	10	13	4	1	5	73
Total Part 1 Crime	21	22	10	16	8	1	5	83



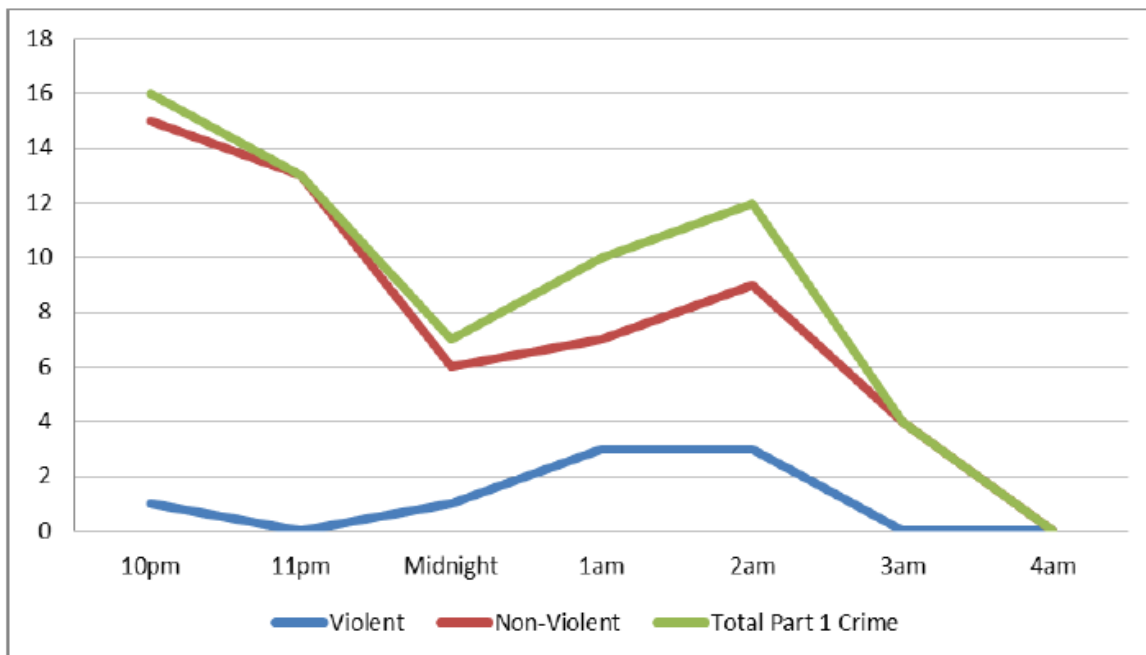
Central Patrol Division
Reporting Areas 1161 and 1164
Part 1 Offenses Year to Date, January 1 - December 31, 2012

Offense	10pm	11pm	Midnight	1am	2am	3am	4am	Total
AGG ASSAULT		2			1			3
BURGLARY-BUSINESS	3	1	1	1		1	1	8
BURGLARY-RESIDENCE	2					1	1	4
MURDER								0
OTHER THEFTS	4	1	1	1	1	1	1	10
RAPE								0
ROBBERY-BUSINESS								0
ROBBERY-INDIVIDUAL		2	1	1	3			7
THEFT/BMV	6	7	5	1	3	1		23
THEFT/SHOPLIFT								0
UUMV	2	2	4	1	2			11
Total	17	15	12	5	10	4	3	66
Violent		4	1	1	4			10
Non-Violent	17	11	11	4	6	4	3	56
Total Part 1 Crime	17	15	12	5	10	4	3	66



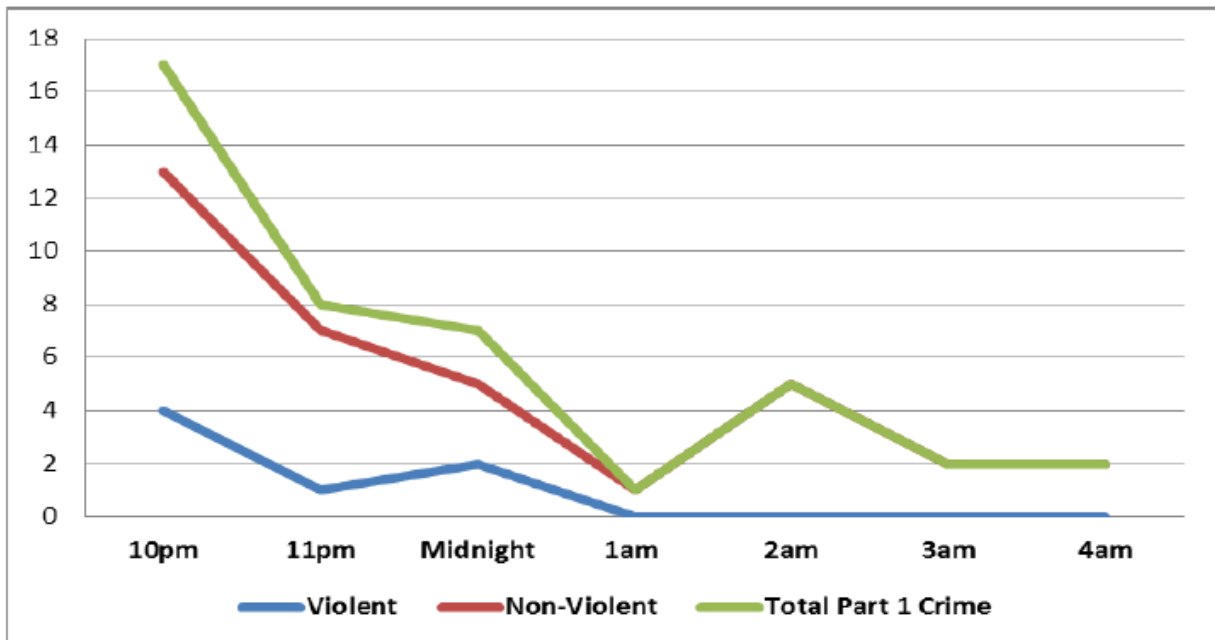
Central Patrol Division
Reporting Areas 1161 and 1164
Part 1 Offenses Year to Date, January 1 - December 31, 2013

Offense	10pm	11pm	Midnight	1am	2am	3am	4am	Total
AGG ASSAULT			1		1			2
BURGLARY-BUSINESS		1			1	1		3
BURGLARY-RESIDENCE	1	2				1		4
MURDER				1				1
OTHER THEFTS	3	3	2	2	2			12
RAPE								0
ROBBERY-BUSINESS								0
ROBBERY-INDIVIDUAL	1			2	2			5
THEFT/BMV	11	7	4	5	3	1		31
THEFT/SHOPLIFT								0
UUMV					3	1		4
Total	16	13	7	10	12	4	0	62
Violent	1		1	3	3			8
Non-Violent	15	13	6	7	9	4		54
Total Part 1 Crime	16	13	7	10	12	4	0	62



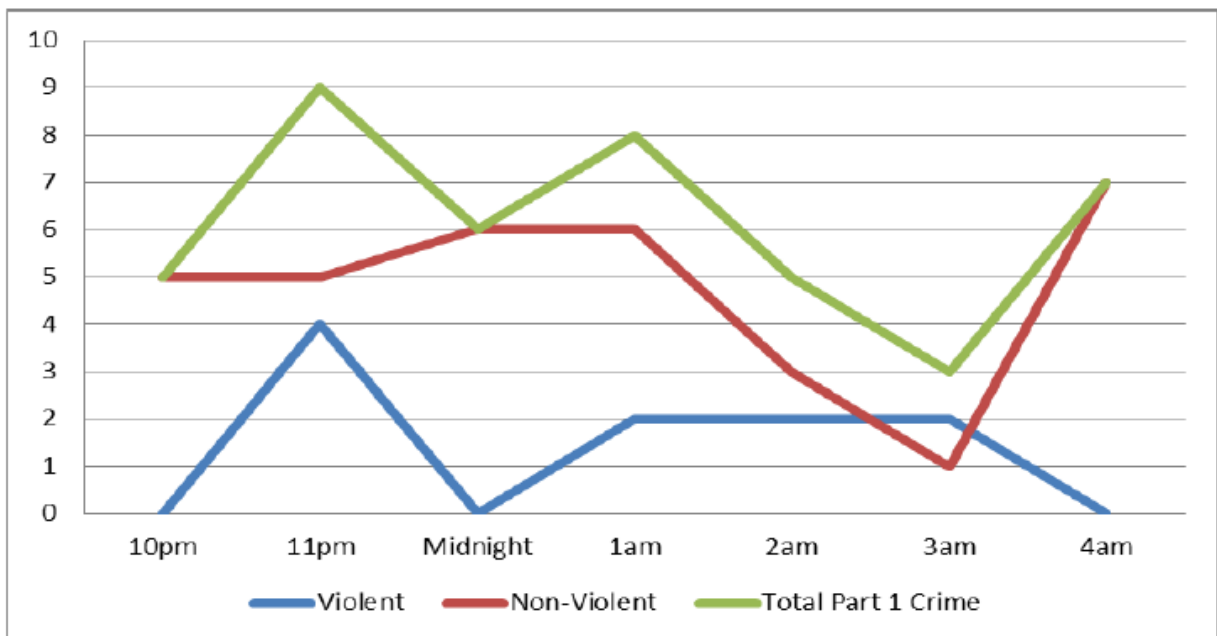
Central Patrol Division
Reporting Areas 1161 and 1164
Part 1 Offenses Year to Date, January 1 - December 31, 2014

Offense	10pm	11pm	Midnight	1am	2am	3am	4am	Total
AGG ASSAULT	1							1
BURGLARY-BUSINESS	2	1			1			4
BURGLARY-RESIDENCE	2	1	1					4
MURDER								0
OTHER THEFTS	3	2					1	6
RAPE	1							1
ROBBERY-BUSINESS	1							1
ROBBERY-INDIVIDUAL	1	1	2					4
THEFT/BMV	3	2	3		1	2	1	12
THEFT/SHOPLIFT			1					1
UUMV	3	1		1	3			8
Total	17	8	7	1	5	2	2	42
Violent	4	1	2					7
Non-Violent	13	7	5	1	5	2	2	35
Total Part 1 Crime	17	8	7	1	5	2	2	42



Central Patrol Division
Reporting Areas 1161 and 1164
Part 1 Offenses Year to Date, January 1 - December 31, 2015

Offense	10pm	11pm	Midnight	1am	2am	3am	4am	Total
AGG ASSAULT		1			1	1		3
BURGLARY-BUSINESS				1			6	7
BURGLARY-RESIDENCE		1		1	1			3
MURDER								0
OTHER THEFTS		1	2	1	1	1		6
RAPE				1	1	1		3
ROBBERY-BUSINESS		1						1
ROBBERY-INDIVIDUAL		2		1				3
THEFT/BMV	4	2	3	3			1	13
THEFT/SHOPLIFT	1	1						2
UUMV			1		1			2
Total	5	9	6	8	5	3	7	43
Violent	0	4	0	2	2	2	0	10
Non-Violent	5	5	6	6	3	1	7	33
Total Part 1 Crime	5	9	6	8	5	3	7	43



Other Cities:

Fort Worth

- Some Planned Development Districts restrict hours of operation of certain uses.

San Antonio

- Massage businesses can only operate between 8:00 a.m. and 10:00 p.m.
- Billiard halls can only operate between 7:00 a.m. and 2:00 a.m.

Austin

- In the Neighborhood Commercial District, hours of operation for restaurants are limited to no later than 11:00 p.m.

San Jose, CA

- Regulates late night use and activity by requiring Conditional Use Permits. Specifically,
 - No establishment other than office uses, in any commercial district shall be open between the hours of 12:00 midnight and 6:00 a.m. except pursuant to and in compliance with a conditional use permit
 - No outdoor activity, including loading, sweeping, landscaping or maintenance shall occur within one-hundred fifty feet of any residentially zoned property between the hours of 12:00 midnight and 6:00 a.m. except pursuant to and in compliance with a conditional use permit as provided in Chapter 20.100.
- Regulates outdoor uses with 150 feet of residentially zoned property. Specifically
 - No use, which in whole or in part, consists of, includes, or involves any outdoor activity or sale or storage of goods, products, merchandise or food outdoors shall occur on any lands if any part of such lands or any part of the lot on which such buildings are located is situated within one hundred fifty feet of residentially zoned property situate within or outside the city except with a special use permit.