



COUNCIL WORK SESSION

Tuesday, October 30, 2012

6:30 p.m.

Coon Rapids City Center

Conference Room 1

Call to Order

Pursuant to Minnesota Statute 13D.04, subd. 2, the City Council will meet in work session to discuss the following:

1. Consideration of Fuel Prepay Ordinance

Other Business

Adjourn



City Council Work Session

1.

Meeting Date: 10/30/2012

Subject: Consideration of Fuel Prepay Ordinance

Submitted For: Steve Gatlin, City Manager

From: Cher Ridout, Admin Secretary II

INTRODUCTION

The Council has requested that a work session be scheduled for October 30, 2012 to revisit the Gasoline and Diesel Fuel Prepay Ordinance.

DISCUSSION

City Council adopted Ordinance 2087 providing for Prepayment for Gasoline and Diesel Fuel at Retail Fuel Businesses on February 21, 2012. The Ordinance became effective on August 1, 2012. A copy of the adopted Ordinance is attached for City Council review.

Since this implementation, the Council has received complaints from business operators, customers, and the general public about difficulties caused by implementation of the Ordinance. Station operators and employees also appeared at a recent Council Open Mic session requesting reconsideration for the Ordinance. The work session on October 30 is intended to provide Council an opportunity to discuss the Ordinance and possible alternatives.

In preparation for the work session, Council requested that staff provide background information. Background information was intended to include crime statistics before and after implementation of the Ordinance and sales statistics including gas sales, store sales, and total number of transactions before and after the Ordinance became effective.

Crime Statistics - The Police Department has provided the attached summary memo of crime statistics. Chief Wise and Officer Terry Thomson will be at the work session to discuss the statistics and provide analysis.

Sales Data Request - Staff prepared a letter that was delivered to all station owners and operators. A copy of that letter is attached and was previously provided in a Friday memo.

As of October 24, 2012, staff has not received any statistics regarding sales or transactions from any station operators. The only contact we have received was an email from the convenience store manager for the Highway 10 Mobil Station located at 11580 Hanson Boulevard. A copy of that email is attached. Ms. Cheryl Sweeney, Store Manager, suggests that it is difficult to compare before and after statistics since the Ordinance is so new and so much of their sales depends on the time of year, price of fuel, etc. She suggests that action on the Ordinance be delayed for one year to allow better data to be compiled.

For future Council action on this item, the Council could consider three alternate courses of action including:

1. **Repeal the Ordinance:** This would have to be done by formal Council action following proper procedure.
2. **Take no action on the current Ordinance at this time:** The current Ordinance would remain in effect

and the Council could review the Ordinance in the future, possibly after one year of its initial implementation when better sales and crime data would be available as suggested by the Highway 10 Mobil Manager.

3. **Amend the Ordinance by expanding or modifying the “exception” section:** This course of action has been suggested by one or two station owners and discussed with some City Councilmembers. The Holiday Station on Highway 10 and Hanson Boulevard currently has installed a camera system that allows facial recognition and license plate photos to be obtained. The Station then attempts to recover payment from the vehicle owner. If payment is not received within 30 days, the case is turned over for criminal action. The station owner claims a 70% recovery rate using this approach. Attached is a memo from Doug Johnson, Assistant City Attorney, which discusses the new gas theft statute and some of the legal problems involved if the method used by the Holiday Station on Highway 10 and Hanson Boulevard is implemented. If this method is considered as part of the "exception" section of the Ordinance, the City Attorney would need to further review some of the legal issues and problems identified in Doug Johnson's memo.

Direction from City Council is requested regarding which of these three courses of action Council may wish to pursue. If Council decides to amend the Ordinance by expanding the “exception” section or delaying review pending receipt of additional data, Council’s required data requests and thoughts on an Ordinance amendment is requested.

ALIGNMENT WITH STRATEGIC VISION

This item relates to the **Public Safety** section of the 2030 Strategic Vision by allowing the reallocation of limited police resources to other crime prevention and emergency response needs.

RECOMMENDATION

Staff recommends the Council review the Fuel Prepay Ordinance at the October 30, 2012 work session as requested, and discuss possible alternate courses of action.

Attachments

Fuel Prepay Ordinance

Fuel Prepay Crime Stats

Fuel Station Owner Letter

Mobil Station Email

Gas Theft Statute Memo

ORDINANCE NO. 2087

**AN ORDINANCE ADDING CHAPTER 8-1500, PREPAYMENT
FOR GASOLINE AND DIESEL FUEL AT RETAIL FUEL BUSINESSES
AND THEREBY AMENDING REVISED CITY CODE – 1982,
TITLE 8, HEALTH, SAFETY AND SANITATION**

PREAMBLE:

- A. A significant number of motorists in the City of Coon Rapids are driving into business establishments with gasoline and/or diesel fuel pumps located thereon, filling their vehicles and/or containers with gasoline, and driving off without paying for same; and
- B. For the last several years the City of Coon Rapids Police Department utilized many man hours responding to and investigating thefts as a result of drive offs without paying for gasoline and/or diesel fuel; and
- C. The time spent by the City of Coon Rapids Police Department investigating these thefts detracts from proactive policing opportunities in regard to other community matters and time better spent investigating and /or preventing more serious crimes; and
- D. The frequency of these crimes results in real and significant costs that are borne by the citizens in the City of Coon Rapids; and
- E. These crimes seriously and significantly adversely impact revenues of owners of those business establishments in the City of Coon Rapids involving the sale of gasoline and/or diesel fuel; and
- F. The City of Coon Rapids finds that gasoline and/or diesel fuel thefts are of serious concern, and they can and should be eliminated.

The City of Coon Rapids does ordain:

Section 1. Revised City Code – 1982, Title 8 is hereby amended by adding Chapter 8-1500, Prepayment for Gasoline and Diesel Fuel at Retail Fuel Business as follows: (additions double underlined)

CHAPTER 8-1500

PREPAYMENT FOR GASOLINE AND DIESEL FUEL

AT RETAIL FUEL BUSINESSES

8-1501 Purpose. The City Council finds that reports of theft as a result of gasoline/diesel fuel drive offs without paying are on the increase. Council further finds that the man hours spent by the Police Department along with administrative backup associated therewith detracts from proactive policing opportunities in regard to other community matters and more serious crimes. The City Council therefore determines that it is in the best interest of the City and its citizens to provide for the prepayment for gasoline and diesel fuel at retail fuel businesses.

8-1502 Definitions. For the purposes of this Chapter, the following definitions apply:

(1) "Employee" means the person(s), other than the owner or manager/supervisor, employed to perform services on the premises of a retail fuel business and who have no supervisory responsibilities.

(2) "Manager/supervisor" means the person(s) granted authority or responsibility by the owner for the operations of the retail fuel business.

(3) "Owner" means the individual, group, corporation, partnership, joint venture or other group or entity that owns a retail fuel business.

(4) "Payment" means payment by any legal means, including cash, credit card, debit card, check or otherwise. Presenting a form of payment to be finalized at the conclusion of the transaction shall be considered payment in full.

8-1503 Prohibited Conduct. No retail fuel business owner, manager/supervisor, or employee shall:

(1) Activate any gasoline or diesel fuel pumping device prior to receiving payment in full for the gasoline or diesel fuel; or

(2) Allow or permit any person to dispense gasoline or diesel fuel from a pumping device at a retail fuel business unless the person has first made payment in full.

8-1504 Exception. It is an exception to the application of this Chapter if business owners enter into a civil agreement with customers, pursuant to which customers may activate a fuel pump prior to payment. Such an agreement shall include identifying information of the customer that may be used by the business owner for seeking compensation in the appropriate civil court should the customer fail to pay for fuel after activating the pump.

8-1505 Violation. Any person or business establishment who violates any provision of this Chapter is guilty of a misdemeanor.

Section 2. The effective date of this ordinance shall be August 1, 2012

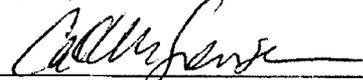
Introduced this 6th day of September, 2011.

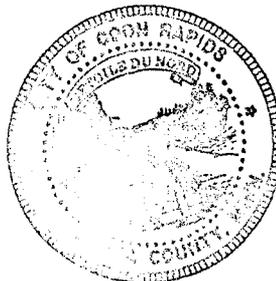
Adopted this 21st day of February, 2012.



Tim Howe, Mayor

ATTEST:


Catherine M. Sorensen, City Clerk





TO: Mayor, City Councilmembers, City Manager
FROM: Brad Wise, Chief of Police
SUBJECT: Statistical Information Regarding
Crime Stats Related to Gas Ordinance
DATE: October 24, 2012

INTRODUCTION

The City Council has requested statistical information for their October 30, 2012 work session for reviewing the progress of the Ordinance requiring the prepayment for gasoline.

DISCUSSION

I prepared 11 charts that appear on the six attached pages which outline the statistical information Council requested in preparation for their work session meeting October 30th. An overview explanation of each chart is as follows:

Chart 1 is a comparison to our peer cities of “Part 1” crime rates as reported in the FBI’s Uniform Crime Report. These statistics are available to the public, on-line. Cities included are those with a population of 50,000 to 75,000.

Chart 2 is the same data used in chart 1 only expressed in a different way.

Chart 3 is of gas theft reports received from fuel stations by Coon Rapids PD since 2002.

Chart 4 shows gas theft reports by month since January 2010. This includes data since the ordinance went into effect. Note the number reported since 8/1/2012 is zero.

Chart 5 uses the same police data on gas thefts to compare individual months over the last four years.

Chart 6 compares annual gas theft reports received by neighboring cities. These statistics are from the county-wide records system all Anoka County law enforcement shares.

Chart 7 uses the same gas theft data of neighboring cities to break the numbers down by month since January 2011. August, September, and October numbers for Coon Rapids are zero. The October numbers of neighboring agencies are through October 24th.

Chart 8 shows the Coon Rapids monthly trend for Larceny (theft), not including gas theft, since January 2010.

Chart 9 is an expression of the same Larceny numbers to compare individual months to each other over the last four years.

Chart 10 and **Chart 11** are side by side to allow for a crime rate comparison with the same peer cities showing a “theoretical” comparison with no gas thefts.

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ALIGNMENT WITH STRATEGIC VISION

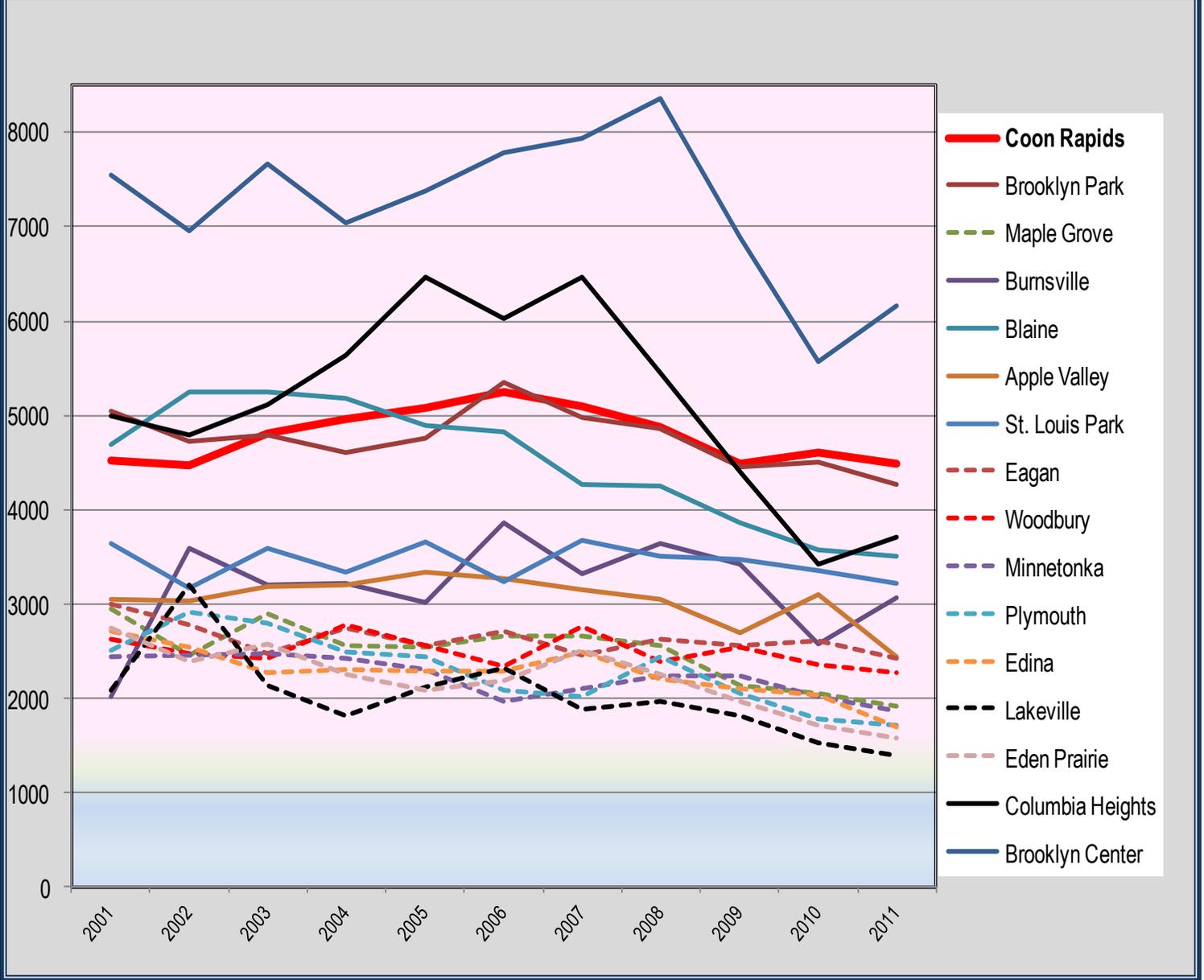
This item relates to the Public Safety section of the 2030 Strategic Vision by aiding in assessing the impact of the ordinance on our crime.

RECOMMENDATION

Staff recommends Council consider these statistics as part of their discussion on the progress of the ordinance requiring the prepayment for gasoline.

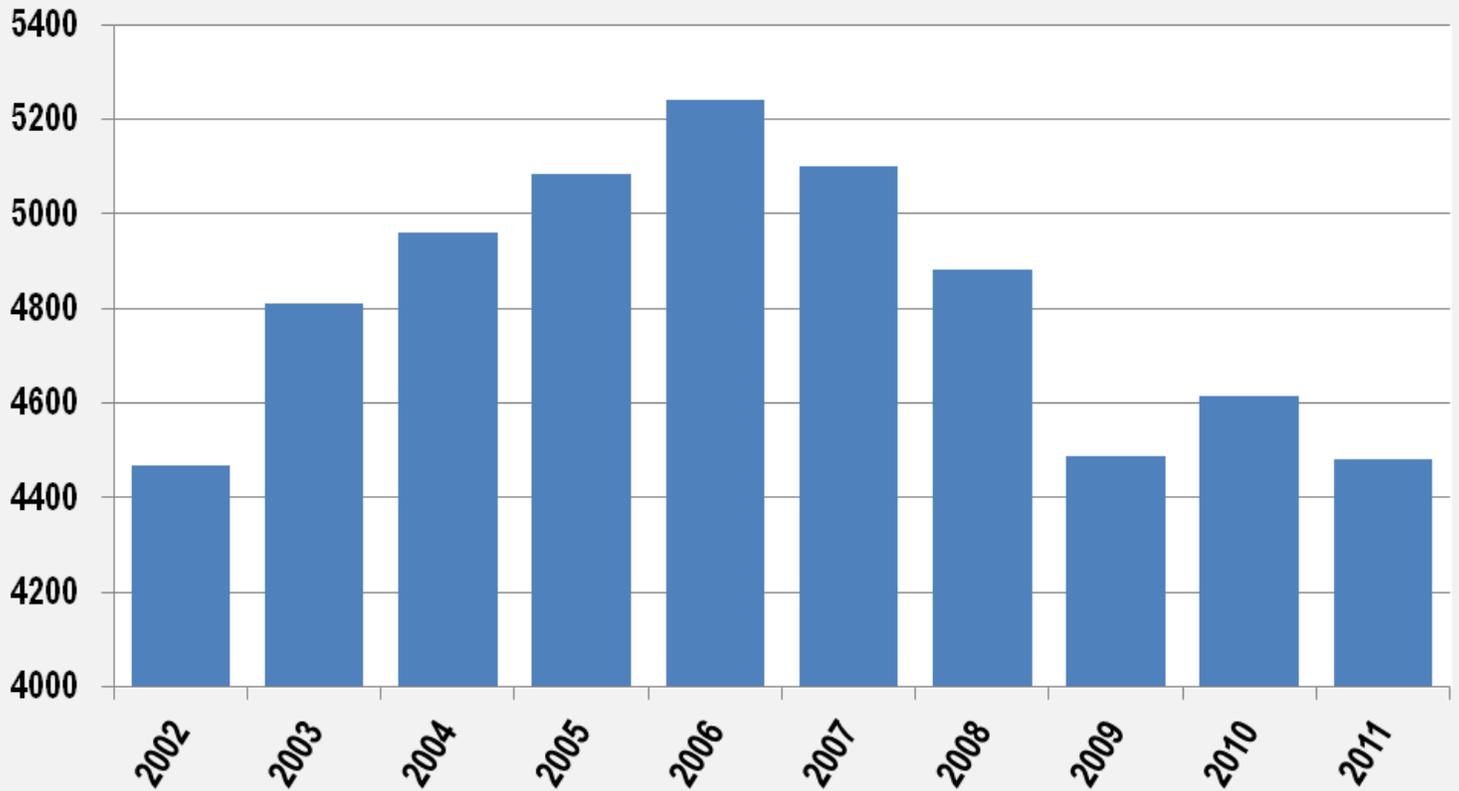
FBI Uniform Crime Report

"Part 1" Crime Rate Comparison of select cities



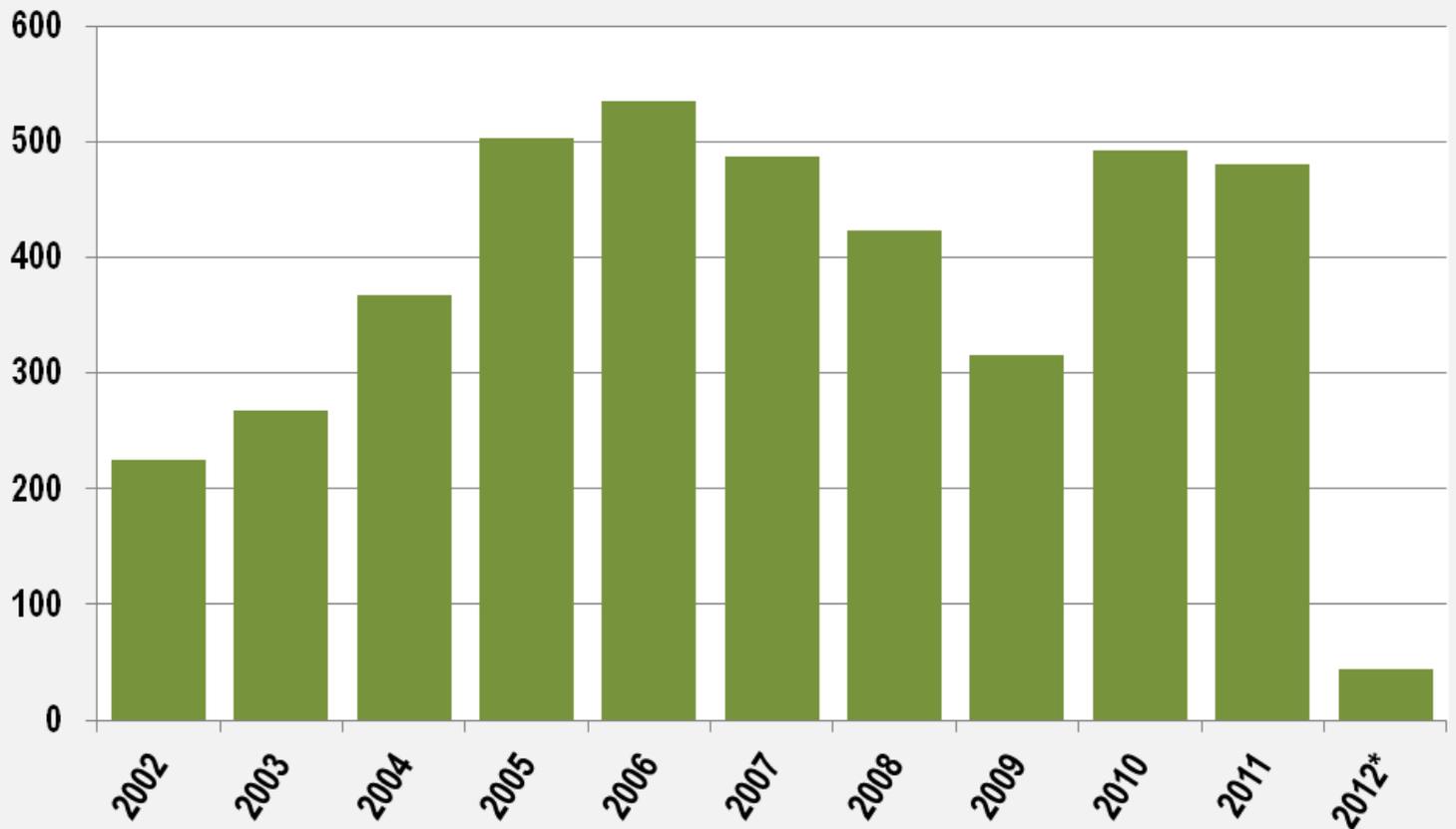
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Coon Rapids' "Part 1" Crime Rate



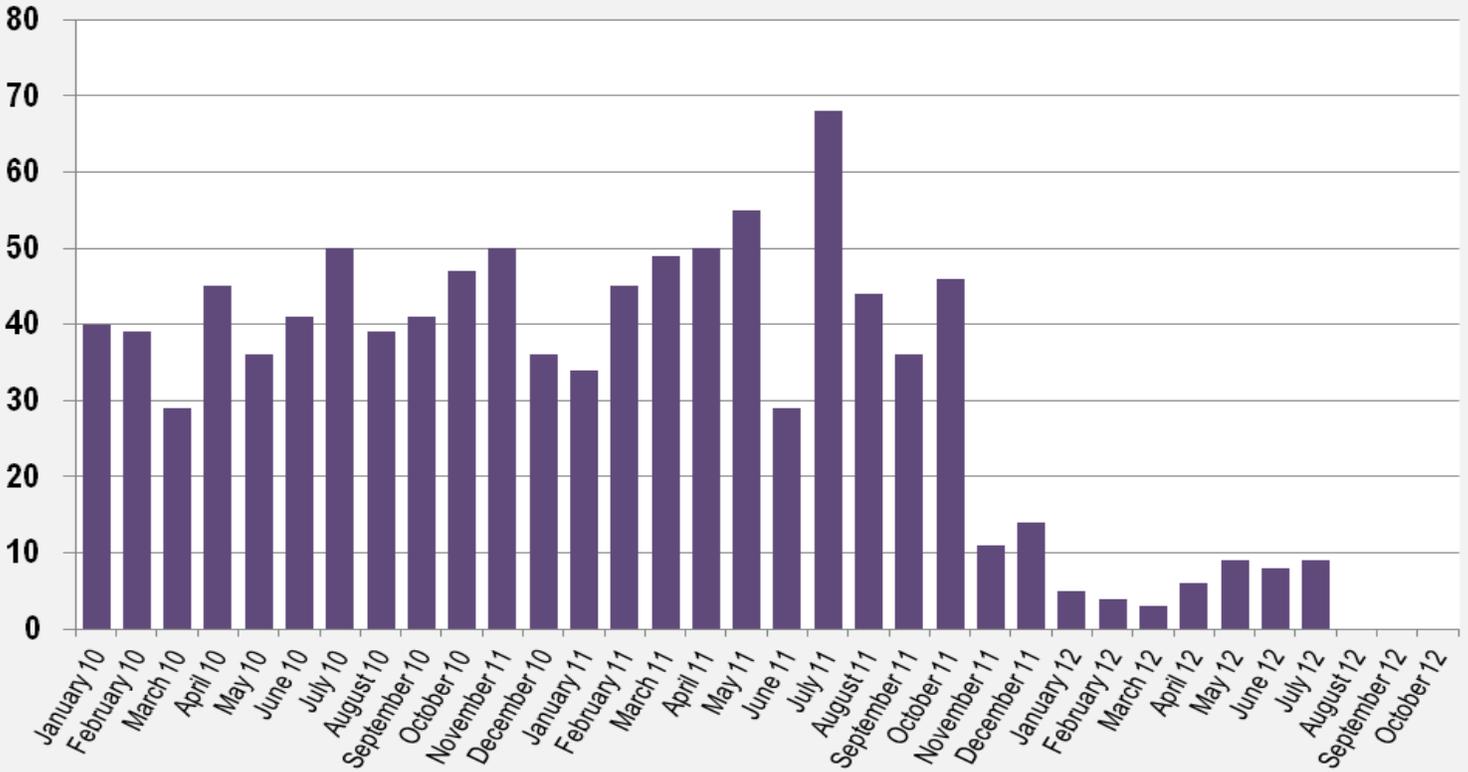
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Coon Rapids' Gas Theft Reports



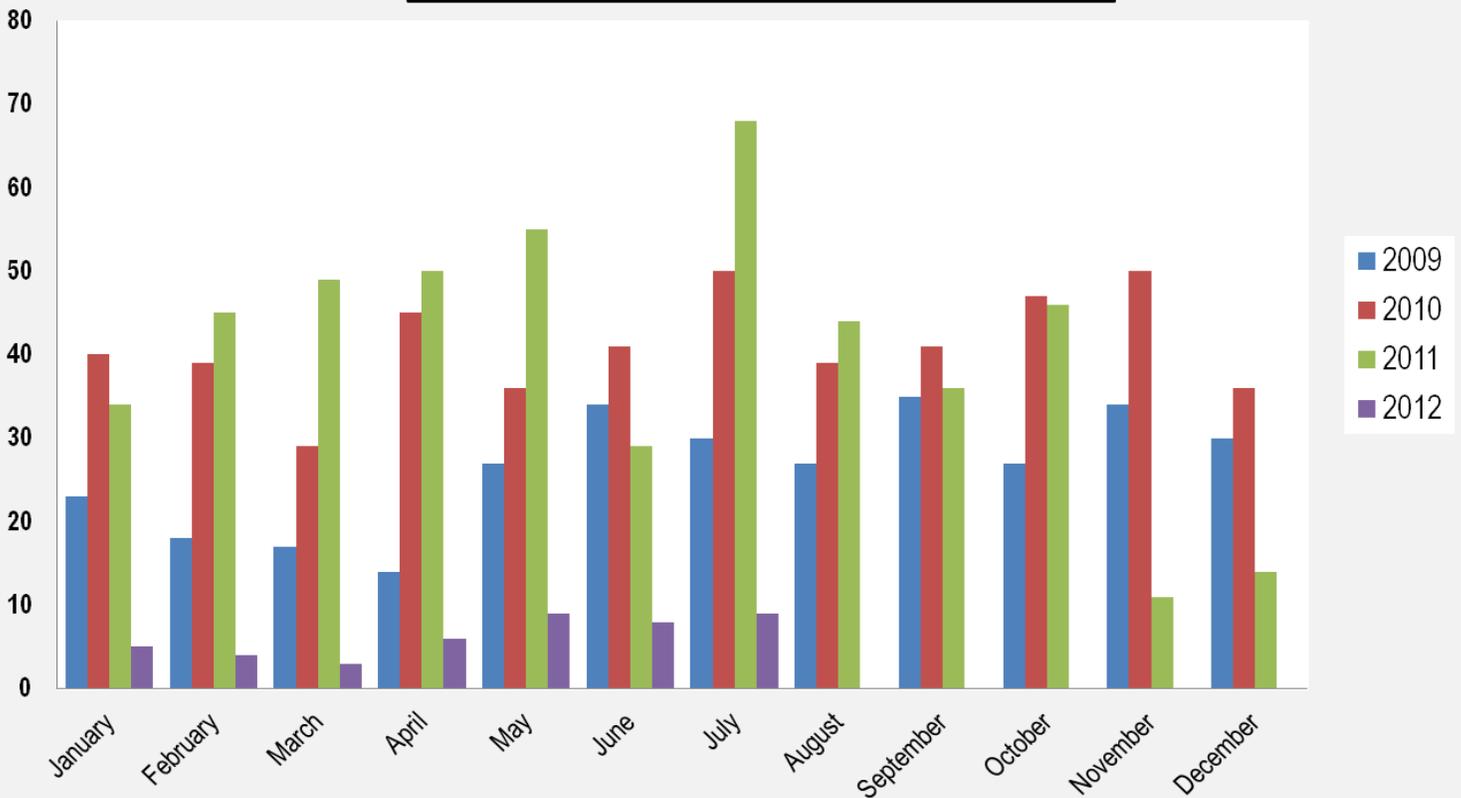
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Coon Rapids Reported Gas Thefts by Month (January 2010 to present)



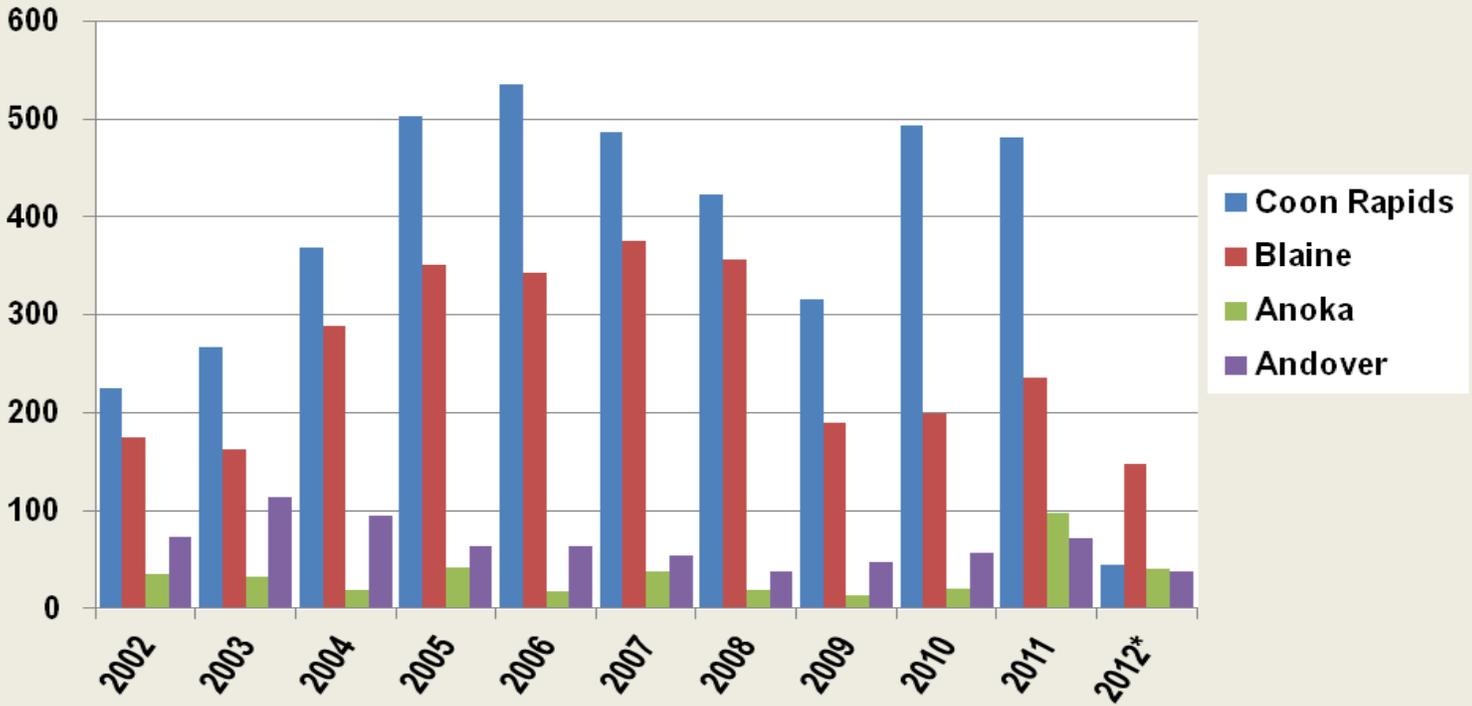
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Coon Rapids Gas Thefts Comparing Months over last 4 years



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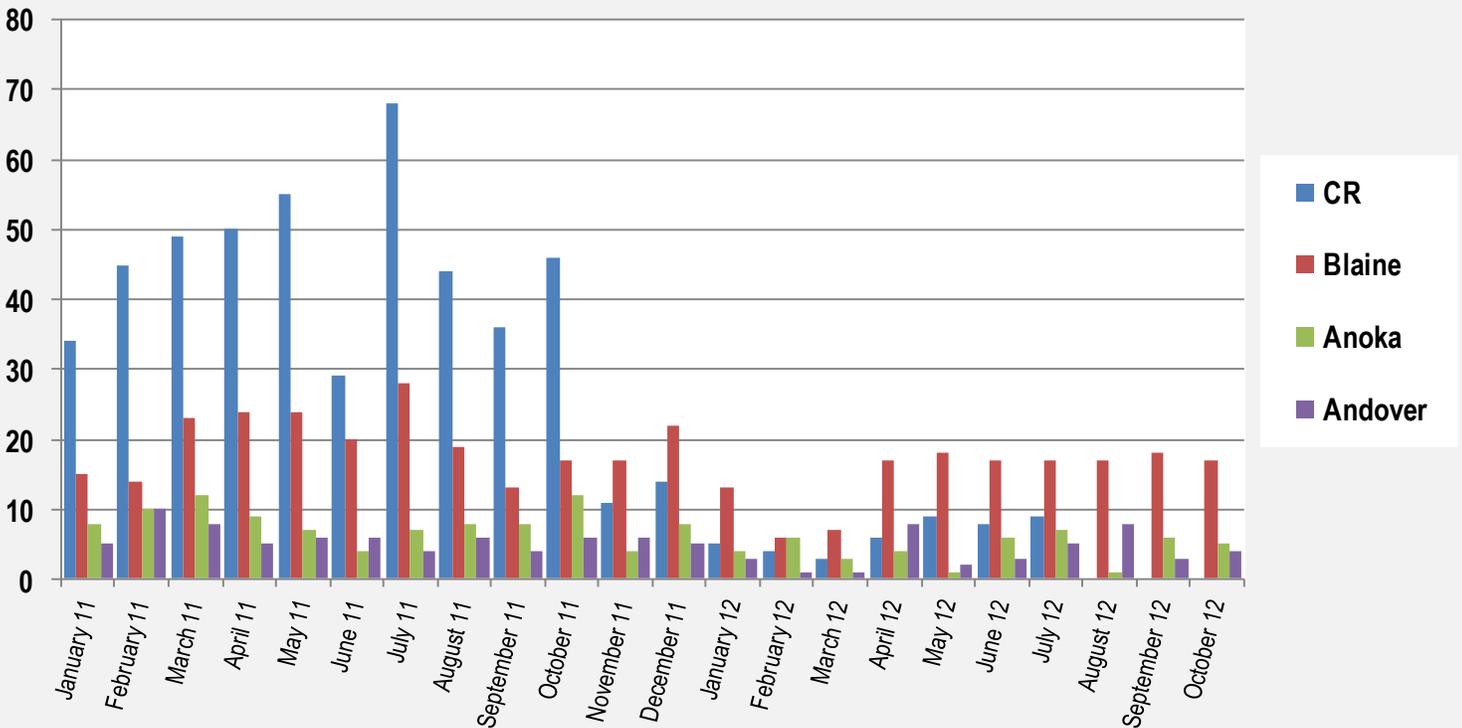
Comparing Neighboring Cities' Annual Gas Thefts



7

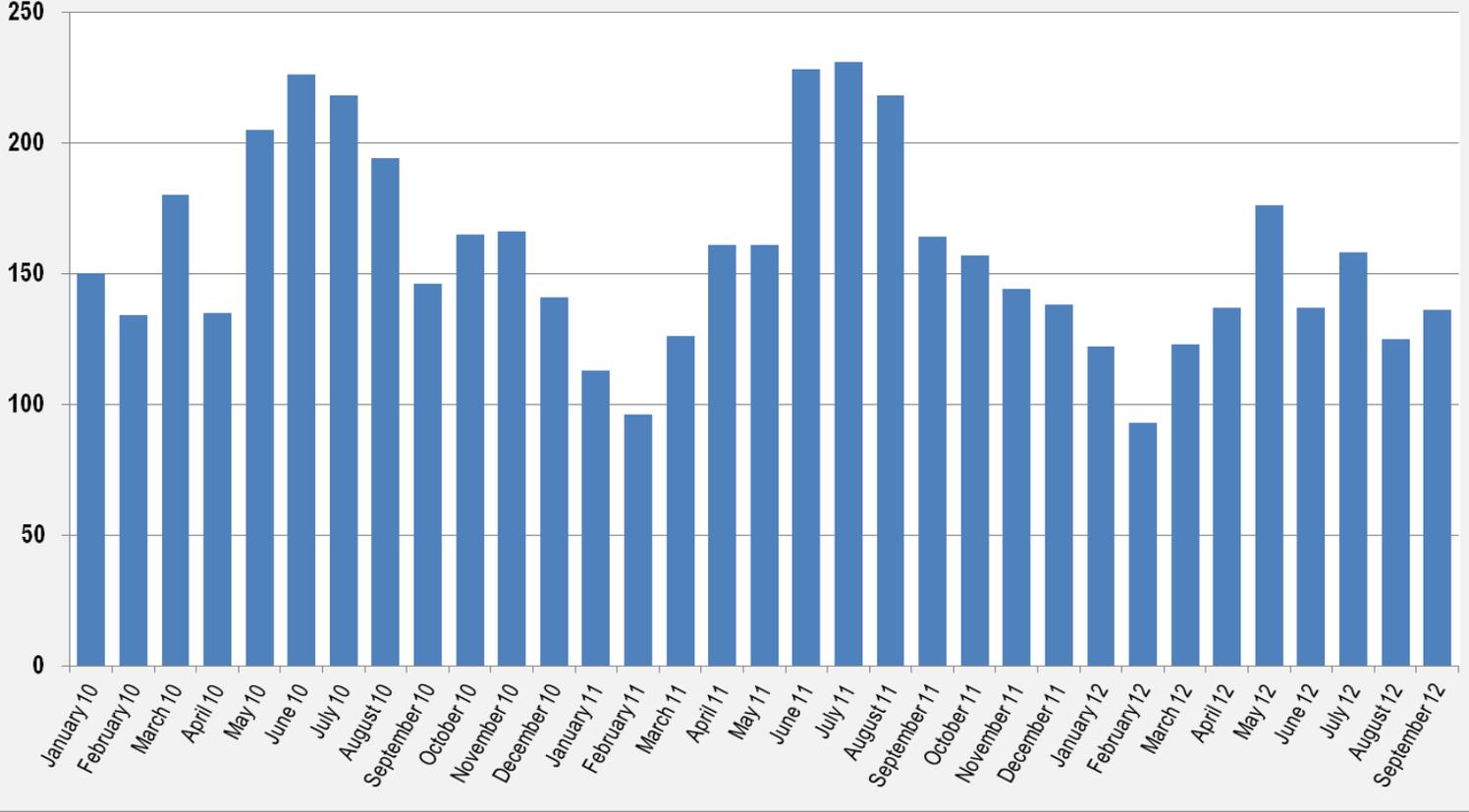
Comparing Cities' Monthly Gas Thefts

Since January 2011



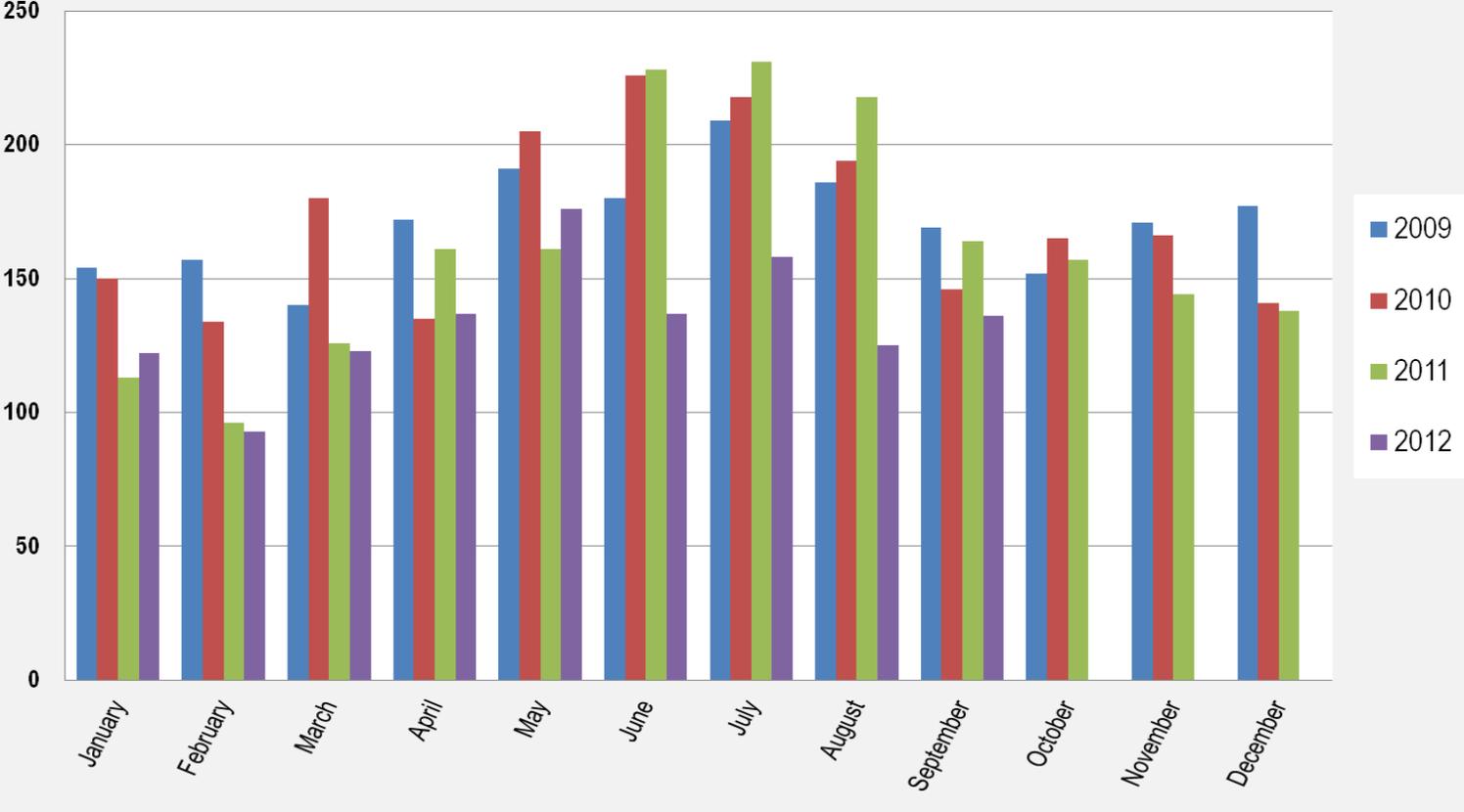
8

Coon Rapids' Larceny Trend (does not include gas thefts)
Since January 2010



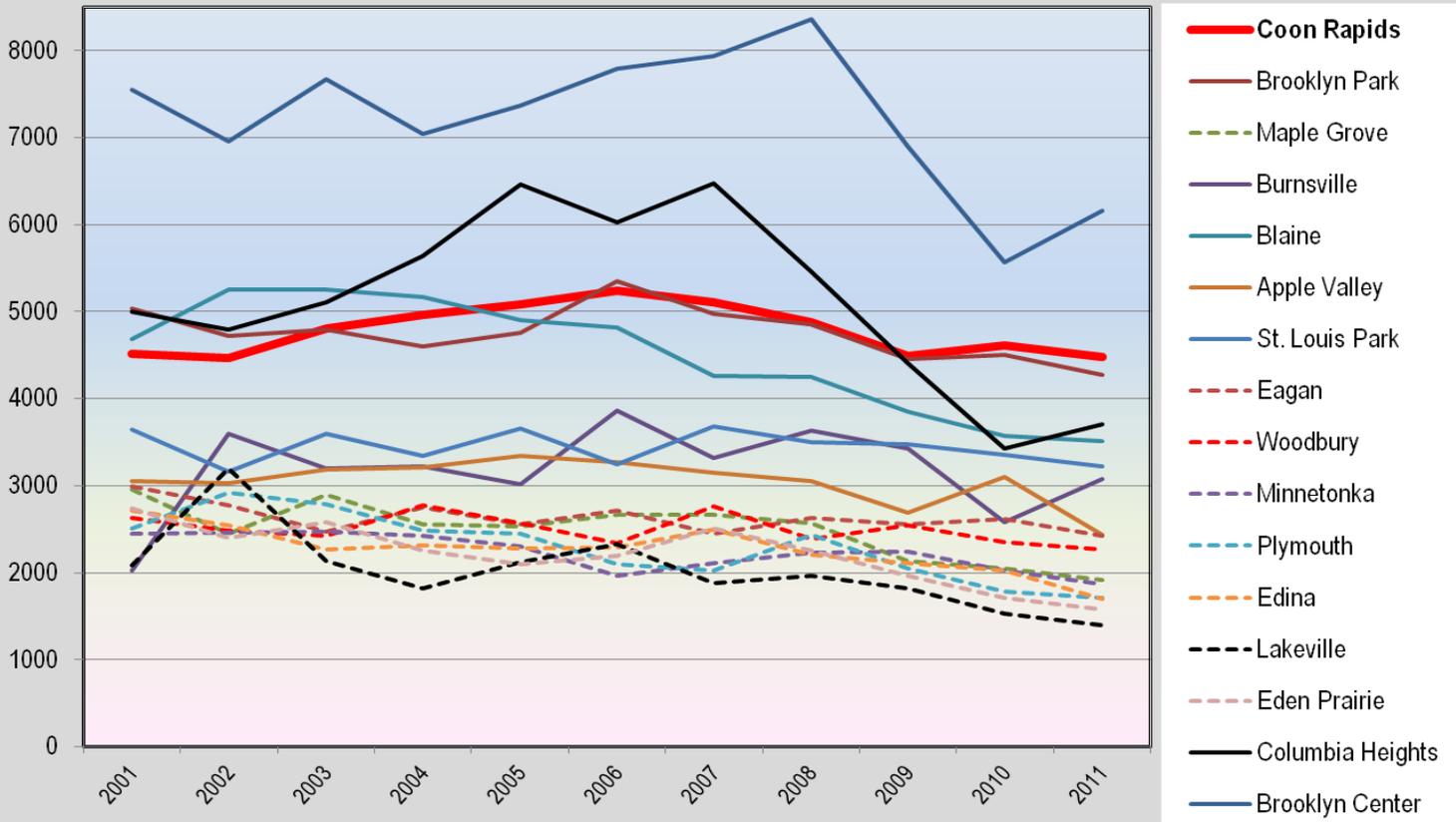
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Coon Rapids' Larceny Trend (not including gas thefts)
Comparing Months over Last 4 Years



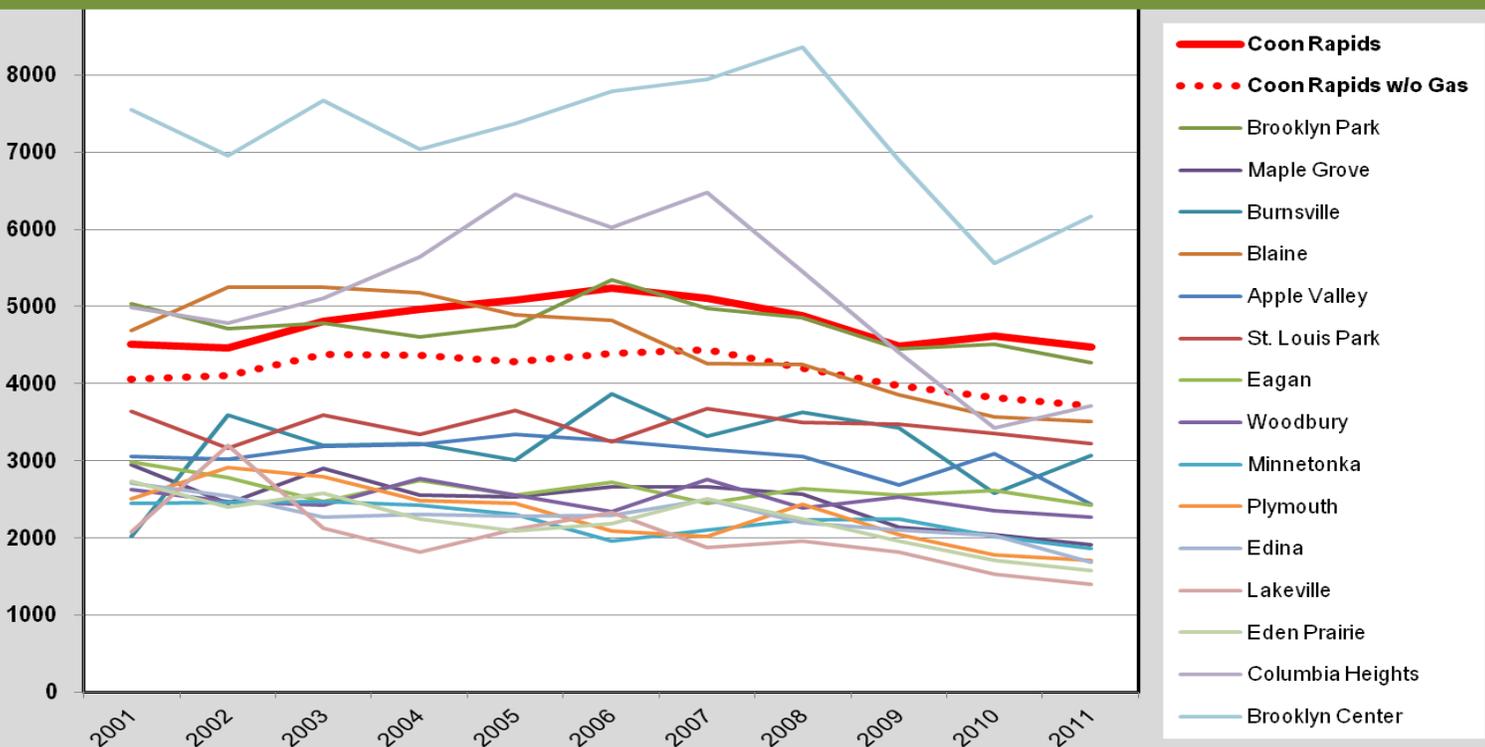
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Part 1 Crime Rate Comparison



11

Part 1 Crime Rate Comparison
Including a "what if" no gas drive offs had been reported





October 10, 2012

SUBJECT: City of Coon Rapids Fuel Prepay Ordinance

Dear Fuel Station Owner:

On behalf of the Coon Rapids City Council, I would like to invite you to attend a Council *Work Session* where the City Council will discuss the implementation and status of the Prepayment for Gasoline and Diesel Fuel at Retail Businesses ordinance. This meeting is scheduled to take place **Tuesday, October 30th at 6:30 pm in the Council Chambers of Coon Rapids City Hall.**

For this meeting, the Council intends to discuss the impact this ordinance has had on relevant crime statistics. They are also interested in having a conversation about economic impacts the new ordinance may have on fuel station operators. To assist the Council in its deliberation they have asked that station operators provide data on gasoline sales, in-store sales, and the total number of transactions both before and after implementation of the ordinance. If you are willing to share any of this data prior to the October 30 work session, please forward the information directly to me at the email below. This information would be very helpful in City Council discussions and would be kept confidential. Also, if you have data regarding percentages of your customers that are Coon Rapids residents this would be useful as well.

Please note that a Council *Work Session* is an informal meeting of Council members where they have the opportunity to have a casual conversation with each other regarding their views on public policy. Depending on the nature of their discussions, they may ask for input from citizens and others with a vested interest that may be in attendance. They do not ask attendees for formal testimony from a lectern, nor do they typically take formal actions as in regular Council meetings. The Mayor acts as moderator, and does enforce rules of decorum designed to ensure a respectful exchange of ideas.

If you would like to discuss this matter prior to the work session please call me at 763-767-6458 or email me at sgatlin@coonrapidsmn.gov .

Sincerely,

Steve Gatlin
City Manager

Steve Gatlin - prepay

From: cheryl sweeney <clsweeney4@yahoo.com>
To: "sgatlin@coonrapidsmn.gov" <sgatlin@coonrapidsmn.gov>
Date: 10/17/2012 2:43 PM
Subject: prepay

Mr. Gatlin,

I Cheryl Sweeney the c-store manager of highway 10 Mobil, located at 11580 Hanson Blvd. in Coon Rapids

I am responding to the memo Officer Thompson dropped off at my location about the prepay.

The information the council would like is very hard to produce; here are some of the following factors in why.

1. The months of June, July and August are the height of the busy, hot summer season and Sept. and Oct. starts to slow down do to school starting, and cooler weather, us as a business can't compare to the year prior because our factor is that city of coon rapids let another convenience store open that has effect our numbers. So in reality the numbers that we would give would not be correct, in this line of work there are so many variables price of fuel, the competitors, economy, and time of year.
2. Our customers ,yes they were upset at first now that it's been about 8 weeks they are getting used to the prepay. And because of our loyalty card we provide for them. We have taken that extra step to help our customers in any way possible to transition them to the prepay.
3. I really do believe that after one year of the prepay ,the city council would have a lot better numbers ,they would have something to compare to and again all the variables would still play in the factor.
4. I will admit that we have had a drive off but because of our loyalty card we called the customer and he came back and paid.

I would like to thank you for your time in reading this,

Cheryl Sweeney

Steve Gatlin - New Gas Theft Statute

From: Doug Johnson
To: Dave Brodie; Steve Gatlin
Date: 10/24/2012 3:01 PM
Subject: New Gas Theft Statute

Effective August 1, 2012, a new paragraph was added to the theft statute providing for a new crime if a person takes motor fuel from a retailer with intent to steal it and drives off without paying. This act has always been a crime under the generic theft statute; the new law is an effort to make it easier for police to charge individuals suspected of committing these crimes.

Historically, "gas drive-off" thefts have been difficult to prove for two reasons: (1) It becomes difficult to prove the identity of the actual perpetrator if the police cannot apprehend and identify him or her soon after the theft; and (2) even if the person is identified, he or she will often claim "I forgot," which can sometimes be difficult to disprove. For these two reasons, gas drive-offs often generate a large amount of police investigation time, which can include checking records, tracking down prior owners of vehicles, trying to disprove alibis, creating photo line-ups for employees to view, and reviewing prior records of suspects to prove a pattern of criminal conduct or association with a vehicle.

The new statute does not effectively address the identity issue. A draft of the statute prior to enactment likely had a clause that allowed a judge or jury to infer that the vehicle owner was the perpetrator. This language did not end up in the enacted version, likely because of the court's throwing out of a Minneapolis ordinance that similarly tried to infer guilt upon a registered owner in a red light violation where the vehicle's license plate was caught on camera.

As to the "I forgot" issue, the statute does allow the judge or jury to infer guilt on the "driver" if he or she drives off without paying, the retailer sends to the driver a notice demanding payment, and he or she fails to pay or dispute the claim within 30 days. This process raises several problems. First, there is the threshold problem of determining who the driver is. Second, the statute is silent about situations where we know, via observation or camera, that a passenger, not the driver, pumped the gas. And the retailer does not, under the present construction of the statute, enjoy the ability simply to infer that the owner was the driver, at least for purposes of a criminal prosecution.

But even if the retailer can figure out who to notify, we can run into more problems, which we have had experience with using a similar scheme for worthless check prosecutions: (1) the retailer fails to retain accurate copies of the notice documents; (2) the retailer sends the notice to the wrong address, or in some other way fails to comply with the notice requirements; and (3) the suspect would contend he or she never got the notice. Remember that these statutory "inferences" are always rebuttable, so as you might expect, most people come to court (if they come to court at all: many of these cases end up in warrant status) alleging (1) "It wasn't me," or (2) "I forgot," and (3) "I never got the notice." Even with the inference, a criminal prosecution can become very difficult under these circumstances.

Here is the statutory text:
609.52, Subd. 2. Acts constituting theft.

(18) intentionally, and without claim of right, takes motor fuel from a retailer without the retailer's consent and with intent to deprive the retailer permanently of possession of the fuel by driving a motor vehicle from the premises of the retailer without having paid for the fuel dispensed into the vehicle.

Proof that the driver of a motor vehicle into which motor fuel was dispensed drove the vehicle from the premises of the retailer without having paid for the fuel permits the factfinder to infer that the driver acted intentionally and without claim of right, and that the driver intended to deprive the retailer permanently of possession of the fuel.

This paragraph does not apply if: (1) payment has been made to the retailer within 30 days of the receipt of notice of nonpayment under section 604.15; or (2) a written notice as described in section 604.15, subdivision 4, disputing the retailer's claim, has been sent.

This paragraph does not apply to the owner of a motor vehicle if the vehicle or the vehicle's license plate has been reported stolen before the theft of the fuel.

The civil statute, which is referenced by the criminal statute for purposes of sending notice, reads:

604.15 CIVIL LIABILITY FOR RECEIVING MOTOR FUEL WITHOUT PAYING.

Subdivision 1. Definitions. For purposes of this section:

- (1) "motor fuel" means a liquid, regardless of its properties, used to propel a vehicle;
- (2) "retailer" means a person that sells motor fuel at retail; and
- (3) "vehicle" means a motor vehicle or watercraft that is self-propelled and that uses motor fuel for propulsion.

Subd. 2. Acts constituting. (a) The owner of a vehicle that receives motor fuel that was not paid for is liable to the retailer for the price of the motor fuel received and a service charge of \$30. This charge may be imposed immediately upon the mailing of the notice under subdivision 3, if notice of the service charge was conspicuously displayed on the premises from which the motor fuel was received. The notice must include a statement that additional civil penalties will be imposed if payment is not received within 30 days. Only one service charge may be imposed under this paragraph for each incident. If a law enforcement agency obtains payment for the motor fuel on behalf of the retailer, the service charge may be retained by the law enforcement agency for its expenses.

(b) If the price of the motor fuel received is not paid within 30 days after the retailer has mailed notice under subdivision 3, the owner is liable to the retailer for the price of the motor fuel received, the service charge as provided in paragraph (a), plus a civil penalty not to exceed \$100 or the price of the motor fuel, whichever is greater. In determining the amount of the penalty, the court shall consider the amount of the fuel taken and the reason for the nonpayment. The retailer shall also be entitled to:

- (1) interest at the legal rate for judgments under section 549.09 from the date of nonpayment; and
- (2) reasonable attorney fees, but not to exceed \$500.

The civil penalty may not be imposed until 30 days after the mailing of the notice under subdivision 3.

Subd. 3. Notice of nonpayment. Notice of nonpayment that includes a citation to this section and a description of the penalties contained in it shall be sent by the retailer to the owner by regular mail, supported by an affidavit of service by mailing, to the address indicated by records on the vehicle under section 86B.401 or 168.346. The notice must include a signed statement by the employee who reported the act describing what the employee observed and the license number of the motor vehicle. Failure of the owner to receive a notice is not a defense to liability under this section.

An affidavit of service by mailing must be retained by the retailer.

Subd. 4. Notice of dispute. If, within the 30-day period referred to in subdivision 2, paragraph (b), the owner sends written notice to the retailer disputing the retailer's claim that the owner received motor fuel from the retailer without paying for it, the retailer may collect the price of the motor fuel and the civil penalties imposed by this section only pursuant to a judgment rendered by a court of competent jurisdiction.

Upon receipt of the notice, the retailer shall cease all collection efforts.

Subd. 4a. Trade association services. A trade association recognized by the Internal Revenue Service as an exempt organization under section 501(c)(6) of the Internal Revenue Code may, on behalf of a member retailer, give and receive notices authorized by this section and collect payments for motor fuel and the service charge specified under subdivision 2.

Subd. 5. Not a bar to criminal liability. Civil liability under this section does not preclude criminal liability under applicable law.