

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion of proposed Ordinance No. 688 – Stay out of Drug Area (SODA)
DEPARTMENT:	Shoreline Police Department City Attorney’s Office
PRESENTED BY:	Shawn Ledford, Shoreline Police Chief Scott Strathy, Shoreline Police Captain Chad Devore, Shoreline Police Sergeant Julie Ainsworth-Taylor, Assistant City Attorney
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

Currently, the City does not have regulations in place that authorizes the Prosecuting Attorney’s Office, in consultation with the Police, to request that the court prohibit drug users and dealers from congregating in designated areas known for drug use, sales and other criminal activity. Several cities in the region have adopted Stay Out of Drug Area (SODA) regulations that provide this authority in their jurisdictions. If adopted, proposed Ordinance No. 688 would provide these regulations in Shoreline.

RESOURCE/FINANCIAL IMPACT:

There is not a direct budget impact with adopting SODA regulations. Shoreline Police Officers will have the discretion to physically book an individual subject to a court-issued SODA Order into jail for a violation of that Order, which would incur a cost, or choose to cite and release that individual. As well, SODA regulations will help prevent groups of drug users and dealers from congregating to engage in narcotics transactions and other illegal activity. This type of congregation often leads to other criminal acts supporting a drug habit, such as burglary, car prowling, shoplifting, and other crimes.

RECOMMENDATION

There is no formal action required by Council this evening. Staff recommends that Council discuss proposed Ordinance No. 688 and direct staff to incorporate any modifications that Council may have to the draft ordinance and return by May 8, 2014 for potential adoption.

Approved By: City Manager **DT** City Attorney **IS**

BACKGROUND

In October 2013, a Shoreline business owner contacted the Shoreline Police Department regarding concerns with the business property he owns in the 16700 block of Aurora Avenue North. His concerns included loitering, vandalism, and narcotics activity occurring on a regular basis on or near his property. This activity occurs primarily during daytime hours and doesn't promote an inviting and safe environment conducive to establishing a successful business. Additionally there have been complaints to police from residents in the area regarding suspected narcotics activity that migrates from Aurora Avenue North into the surrounding neighborhoods.

Based on this information, the Shoreline Police Department's Special Emphasis Team (SET) conducted several undercover operations near the business property noted above and purchased heroin, methadone, and a firearm from individuals that had congregated in this area along Aurora Avenue North. On January 27, 2014, the SET gave a presentation to the Council at a dinner meeting which included a video of narcotics transactions at this property. These transactions took place within the core of the City, during daytime hours and, in one case, involved a young child who was present during one of the transactions.

Currently, the City does not have regulations in place that authorizes the Prosecuting Attorney's Office, in consultation with the Police, to request that the court prohibit drug users and dealers from congregating in designated areas known for drug use, sales and other criminal activity. Both police experience with problem areas and detailed crime analysis support the fact that there are certain areas associated with high narcotics activity. For Shoreline, these include locations along Aurora Avenue North, the Interurban Trail, the Aurora Village Transit Center, and Echo Lake Park. Adoption of a SODA ordinance would provide Shoreline Police a new tool to help address these problem areas.

DISCUSSION

In researching this topic, staff reviewed SODA regulations from other cities, including Seattle, Tacoma, Burien, SeaTac, and Everett. Using these other jurisdictions' ordinances as potential models, the Shoreline Police Department worked closely with the City Prosecutor and City Attorney to develop a draft SODA ordinance (Attachment A) that takes a common sense approach to quickly address, prevent, and enforce narcotics activity in the City. The adoption of these regulations will help promote a safe environment for local businesses, their patrons, Shoreline citizens, and visitors to the community.

The proposed SODA ordinance would operate in a manner similar to the City's existing Stay Out of Areas of Prostitution (SOAP) regulations; Shoreline Municipal Code 9.10.560. Adopted in 1996, the SOAP regulation has been an effective tool for the police to quickly address and enforce suspected prostitution activity. The regulation serves to promote a sense of safety and security by prohibiting prostitutes from actively working in the highly populated and visible areas of Aurora Avenue.

SODA Ordinance Components

Designation of SODA

The initial step for an effective SODA regulation is the designation of specified geographic areas within the City from which a criminal defendant may be excluded by the court as either a condition of pre-trial release or post-conviction sentencing. The designation of SODAs should be based on the history of drug-related criminal activities or other criminal activities occurring consistently within the area so as to threaten the general welfare of the community.

In the past five years, there have been 1,505 narcotic related incidents in the City of Shoreline. This equates to a five-year average of 301 narcotic related incidents a year, including an average of 44 arrests per year. However, narcotics-related activity has been on the rise in Shoreline. In 2013, Shoreline Police saw a significant increase in narcotics activity. On average, there were 284 narcotic-related incidents in the years 2009 through 2012, while in 2013, there were 369 incidents; a 30% increase over the previous four-year average. A majority of the “on-views” and dispatched calls for service are for controlled substance violations, narcotic activity reports (citizen complaints), overdoses, and disposal of paraphernalia (found needles, etc.). The following table provides the number of narcotics-related activities and arrests by year for 2009 through 2013:

Narcotics-related Activity and Arrests in Shoreline 2009-2013							
	2009	2010	2011	2012	2013	Total	Average
Narcotics-related Activity	334	299	272	231	369	1505	301
Arrests	64	39	37	39	39	218	44

Although these statistics provide drug-related activity throughout the City of Shoreline, a high concentration of this narcotics activity is occurring along the Aurora Avenue corridor. This is supported by the crime data map that is attached to this staff report as Attachment B. Although staff was initially going to recommend that only certain areas of Aurora Avenue be considered for designation as a SODA, the data shows that all of Aurora Avenue can benefit from being designated a SODA.

Additionally, the Interurban Trail parallels Aurora Avenue and is a location where a person can use drugs or conduct narcotic transactions outside the view of the general public. Citizens using the Interurban Trail have at times felt unsafe and called 911 to report suspected narcotics activity.

Finally, the Aurora Village Transit Center and Echo Lake Park are also areas that have higher levels narcotics activity, as they are in close proximity to each other and have greater than average levels of calls for service and police initiated on-view efforts related to narcotics. To improve the health, safety and welfare for patrons of Echo Lake Park a sharpies container was installed in the bathrooms to dispose of hypodermic needles.

Based on this, staff recommends the designation of the entirety of Aurora Avenue North, the Interurban Trail, the Aurora Transit Center, and Echo Lake Park as the initial SODAs for the City of Shoreline. The defined areas of the proposed SODA are enumerated in Exhibit A to the proposed ordinance, and a map of the draft SODA is attached to this staff report as Attachment C. The proposed regulations address review of these areas in the future to ensure their continued effectiveness.

Issuance of SODA Order

A SODA order may only be issued by the Court. The Prosecutor's Office, in consultation with the Police, may request that the court issue a SODA order as a condition of pre-trial release or a condition of sentencing. The Court has ultimate discretion on whether or not to issue the Order and may attach conditions, such as exceptions for work, drug treatment, or school, to the Order.

Enforcement of SODA Order

The Police will have the initial task of enforcing a SODA Order. The Police, in consultation with the City Prosecutor, will promulgate procedures for officers to utilize in enforcing the SODA regulation. Violation of a SODA Order is a gross misdemeanor.

Regulatory Options and Legal Analysis

While staff has focused on SODA in this staff report, there are essentially two legal methods in which a city in Washington State may seek to place reasonable restrictions on an individual charged with or convicted of a crime. Cities may enact regulations pertaining to PADTs, or Protected Against Drug Trafficking Areas, or regulations pertaining to SODAs. While similar in many ways, PADT regulations and SODA regulations are distinct.

Pursuant to RCW 10.66, Drug Traffickers – Off-Limits Orders, a court may enter an order preventing a “known drug trafficker who has been associated with drug trafficking” from entering or remaining in a PADT for up to one (1) year. RCW 10.66.020. Such an order may be entered as either a condition of pretrial release or as a condition of sentencing. *Id.* RCW 10.66 was first enacted in 1989 and has withstood constitutional challenges. See e.g., *State v. McBride*, 74 Wn. App. 460 (1994). The key elements for a PADT is that a court order may only be issued to a known drug trafficker - an individual who has been convicted of a drug offense and subsequently arrested for a drug offense – and that the order may only restrict access to those PADT areas where the drug trafficker has engaged in drug activity. *Id.* at 466; RCW 10.66.040. Thus, PADT regulations have very specific, limiting application.

In contrast, while the City's proposed regulation would grant the court authority to issue a SODA order, additional support is found in the RCW for such orders. For example, pursuant to RCW 9.94A.703(3), a court can impose conditions of community custody, including limitations on staying outside of a specified geographical boundary, as part of sentencing. And, RCW 3.50.320 authorizes a municipal court to impose sentencing conditions. But, unlike a PADT order, a SODA order does not require that the individual first be identified as a known drug trafficker or, for that matter, have any prior felony drug offenses. *State v. White*, 76 Wn. App. 801 (1995) (*White* was charged with possession with intent to deliver cocaine but had no prior offenses). But, to be

constitutionally sound, when imposing a SODA order the court should still ensure that there is a relationship between the crime and the restricting condition. Several unpublished court cases discussed this aspect. *State v. Miller*, 2012 Wash. App. LEXIS 148 (charged with rape, condition of sentencing included SODA restriction) and *State v. Kim*, 2012 Wash. App. LEXIS 1241 (charged with child rape and molestation, condition of sentencing included SODA restricting) (both citing to *State v. Riles*, 135 Wn.2d 326 (1998) and both resulting in the striking of the SODA restriction)); see also, *State v. Johnson*, 2008 Wash. App. LEXIS 2703 (noting the constitutionality of RCW 10.66 when addressing a constitutional challenge to Everett's SODA).

Thus, the difference between PADT regulations and SODA regulations is the prior history of the offending individual. PADT regulations are limited to known drug traffickers whereas SODA regulations can be applied to any individual charged or convicted with any type of crime, not just drug-trafficking crimes. Because SODA regulations provide a broader scope of authority for the court, thereby ensuring greater protection for the City, Staff recommends the use of SODA regulations over PADT.

STAKEHOLDER OUTREACH

On March 4, 2014, staff met with Mr. Ben Ross from Therapeutic Health Services (THS). THS is located at 16715 Aurora Avenue North and is a Nationally Accredited Health Service that provides methadone treatment for patients who qualify and comply with strict rules and policies. Mr. Ross stated that THS supports the concept of a SODA in Shoreline, and pointed out that THS has strict guidelines for their facility, as patients are not allowed to loiter and congregate outside their building after receiving their methadone treatment. Mr. Ross noted that THS hires security to help enforce compliance and has the authority to discontinue service to patients who fail to comply with this policy. He also noted that SODA regulations will help prevent opportunities for drug dealers who use the THS location to target their clients who are often vulnerable to addiction relapse.

COUNCIL GOAL(S) ADDRESSED

A Stay Out of Drug Area (SODA) will help support Council Goal #5 to promote and enhance the City's safe community neighborhoods and initiatives. Some action steps of Council Goal #5 include: initiate a joint parks and police effort to maintain safe parks by addressing resident concerns with crime prevention through environmental design, implement trail monitoring and problem solving for the Interurban Trail, and develop proactive programs related to crime prevention efforts.

RESOURCE/FINANCIAL IMPACT

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RECOMMENDATION

There is no formal action required by Council this evening. Staff recommends that Council discuss proposed Ordinance No. 688 and direct staff to incorporate any modifications that Council may have to the draft ordinance and return by May 8, 2014 for potential adoption.

ATTACHMENTS

Attachment A: Proposed Ordinance No. 688, including Exhibit A

Attachment B: Map of Drug Related Calls for Service and On-Views, 3/1/09 through 2/28/14

Attachment C: Map of proposed SODA

ORDINANCE NO. 688

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, ADDING A SECTION TO CHAPTER 9.10 CRIMINAL CODE OF THE SHORELINE MUNICIPAL CODE DESIGNATING “STAY OUT OF DRUG AREAS” (SODA) AND ESTABLISHING REGULATIONS FOR THE ISSUANCE AND ENFORCEMENT OF COURT-ISSUED SODA ORDERS.

WHEREAS, the Shoreline Municipal Code, Chapter 9.10, provides for the prosecution of various criminal offenses within the City of Shoreline; and

WHEREAS, the City Council finds that local businesses, property owners, and the Shoreline Police Department have reported an increase of criminal activity in certain areas of the City which seriously impacts the quality of life and the standard of commercial activity within the City; and

WHEREAS, the City Council finds that the increase in criminal activity is directly linked to the illegal sale, possession, and use of drugs controlled by Washington’s Uniform Substance Control Act, 69.50 RCW; and

WHEREAS, the City Council has determined that because this Ordinance will assist the criminal justice system in dealing with drug-related criminal activity, it would be in the best interests of the health, safety, and welfare of the citizens of the City of Shoreline to place geographic restrictions on certain violators with respect to illegal drug-related activity; and

WHEREAS, the City Council wishes to designate limited geographic areas of the City as “Stay Out of Drug Areas” (SODAs), recognizing that, in addition to the predetermined SODA areas, superior and district court judges may, on a case-by-case basis, issue orders with prohibited areas for defendants that are different than the legislatively-determined SODAs; and

WHEREAS, in conjunction with these designations, the City Council deems it appropriate to adopt regulations for the enforcement of SODAs and penalties for violations of court-issued SODA orders; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment to Chapter 9.10 Criminal Code.

Section 9.10.220, Definitions, is amended and a new section, Section 9.10.285, Stay Out of Drug Areas (SODA), is added to Title 9, Chapter 9.10, Criminal Code, as set forth in Exhibit A to this Ordinance.

Section 2. Severability.

If any portion of this chapter is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other chapter or any other section of this chapter.

Section 3. Effective Date and Publication.

A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. The ordinance shall take effect and be in full force on July 1, 2014.

PASSED BY THE CITY COUNCIL ON JUNE 2, 2014.

Mayor Shari Winstead

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Ian Sievers
City Attorney

Publication Date:
Effective Date: July 1, 2014

Shoreline Municipal Code

Title 9 – Public Peace, Morals, and Welfare; Section 9.10 Criminal Code
Amendments to SMC 9.10.220; New Section, SMC 9.10.285

Stay Out of Drug Areas (SODA)

Amendment to SMC 9.10.220 – Controlled substances – Definitions

- D. “Stay Out of Drug Area” (SODA) means any specifically described area, public or private, identified and designated by the City as an anti-drug activity emphasis area based on repeat incidents of narcotics-related activity occurring therein.
- E. “SODA Order” means an order issued by a superior, or district court which prohibits or restricts a person from entering or remaining in a designated SODA.

New Section, SMC 9.10.285 - STAY OUT OF DRUG AREAS

A. Purpose.

A court may issue an order prohibiting a person from entering or remaining in a designated “Stay Out of Drug Area” (SODA). This prohibition is one means of addressing illegal drug activity; activity that the City finds is threatening the health, safety, and welfare of the citizens of Shoreline. By designating specific areas, public or private, within the City of Shoreline as a SODA, the City, in conjunction with the court, is working towards eliminating illegal drug possession, use, sales and other criminal activity associated with these activities.

B. Designation of Stay Out of Drug Areas.

1. Certain areas of the City are designated and identified as SODAs based on repeat, high-level incidents of narcotics-related activities occurring within the area. The perimeters of a SODA may be defined using street names or numbers and shall include all real property contained therein, where drug sales, possession of drugs, pedestrian or vehicular traffic attendant to drug activity, or other activity associated with drug offenses confirms a pattern associated with illegal drug trafficking and use. The area shall include the full width of streets, alleys, and sidewalks on the perimeter, common areas, planting strips, parks and parking areas within the area described using the streets as boundaries.
2. The following described areas are identified and designated as a SODA:
 - a. Aurora Avenue North from North 145th Street to North 205th Street, including one block east and west of Aurora Avenue;
 - b. Aurora Transit Center, located at 1524 North 200th Street;
 - c. Echo Lake City Park located at 1521 North 200th Street;
 - d. Interurban Trail corridor, located between North 145th Street and North 205th Street.

The boundaries of the designated SODA identified by this section shall be shown and delineated on the “*Stay Out of Drug Area (SODA)*” map accompanying the ordinance codified in this section and hereby incorporated by reference. The SODA map shall be maintained as such and will be on file at City Hall.

3. Designated SODAs shall be reviewed every two (2) years by the City Attorney and the Chief of Police to ensure their continued effectiveness. Recommendations for de-designation or modification of an existing SODA or for the designation of a new SODA shall be subject to approval by the City Council.

C. Issuance of SODA Order.

1. The City Attorney, after consultation with the Chief of Police, may seek a SODA Order from the court as a condition of pre-trial release or a condition of sentence, deferral, or suspension for any person.
2. A court may enter a SODA Order prohibiting a person from entering or remaining in a designated SODA for up to one year. The SODA Order shall be in writing and shall bear the following language:

“Violation of this court order is a criminal offense under SMC 9.10.285 and shall constitute a separate criminal offense. Violators will be subject to arrest.”

3. The court in its discretion may allow a person subject to a SODA order to enter a SODA under certain conditional exceptions. Exceptions to the SODA order may include travel to and from and/or remaining in the following locations so long as these locations apply to or are used by the person who is subject of the SODA order:
 - a. Place of residence;
 - b. Court/government offices (while open to the public);
 - c. Social services provider or treatment center;
 - d. Place of employment;
 - e. School;
 - f. Attorney’s office; or
 - g. Medical services.

If the court allows for exceptions in the SODA order, the person subject to that order is required to have a copy of the order on his/her person whenever he/she is traveling through a restricted designated SODA(s). Failure to present this order upon request by law enforcement is a violation of the SODA order and subject to the penalties set forth in this chapter. For the purpose of this section, travel is defined as movement on foot or in a vehicle from one point to another without delay.

4. Upon entering a SODA order, the clerk of the court shall forward a copy of the order to the City of Shoreline Police Department on or before the next judicial day following issuance of the order. Upon receipt, the Shoreline Police shall enter

the order into the appropriate law enforcement information system, noting the expiration date of the SODA order.

D. Notice of SODA Order.

A person is deemed to have notice of the SODA order when:

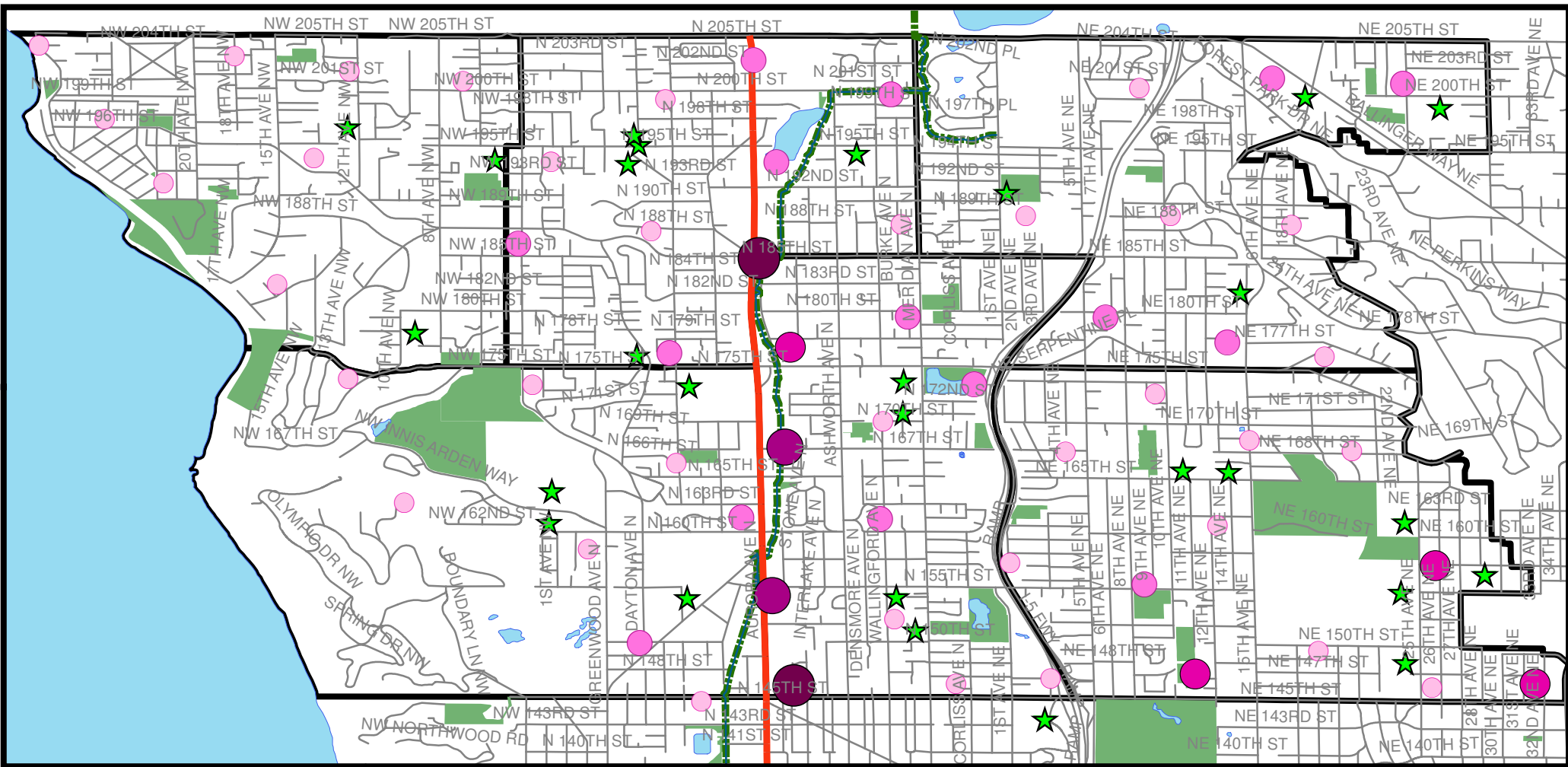
1. The signature of the person prohibited in the order is affixed to the bottom of the order, acknowledging receipt of the order; or
2. The order otherwise indicates that either the person or the person's attorney received a copy of the order.

E. Enforcement Procedure.

1. If a law enforcement officer has probable cause to believe that a person subject to a SODA order is knowingly violating that order, such person may be apprehended and arrested without the necessity for any warrant or additional court order.
2. The Chief of Police, in consultation with the City Attorney, shall have the authority to promulgate procedures for the administration of this chapter.

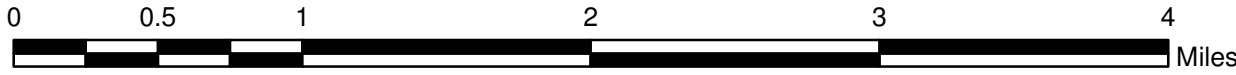
F. Penalties.

1. Any person who knowingly disobeys a SODA order shall be guilty of a gross misdemeanor.
2. Any person who knowingly disobeys a SODA order may also be found in contempt of court.



by KCSO Crime Analyst Konecny
on April 15, 2014

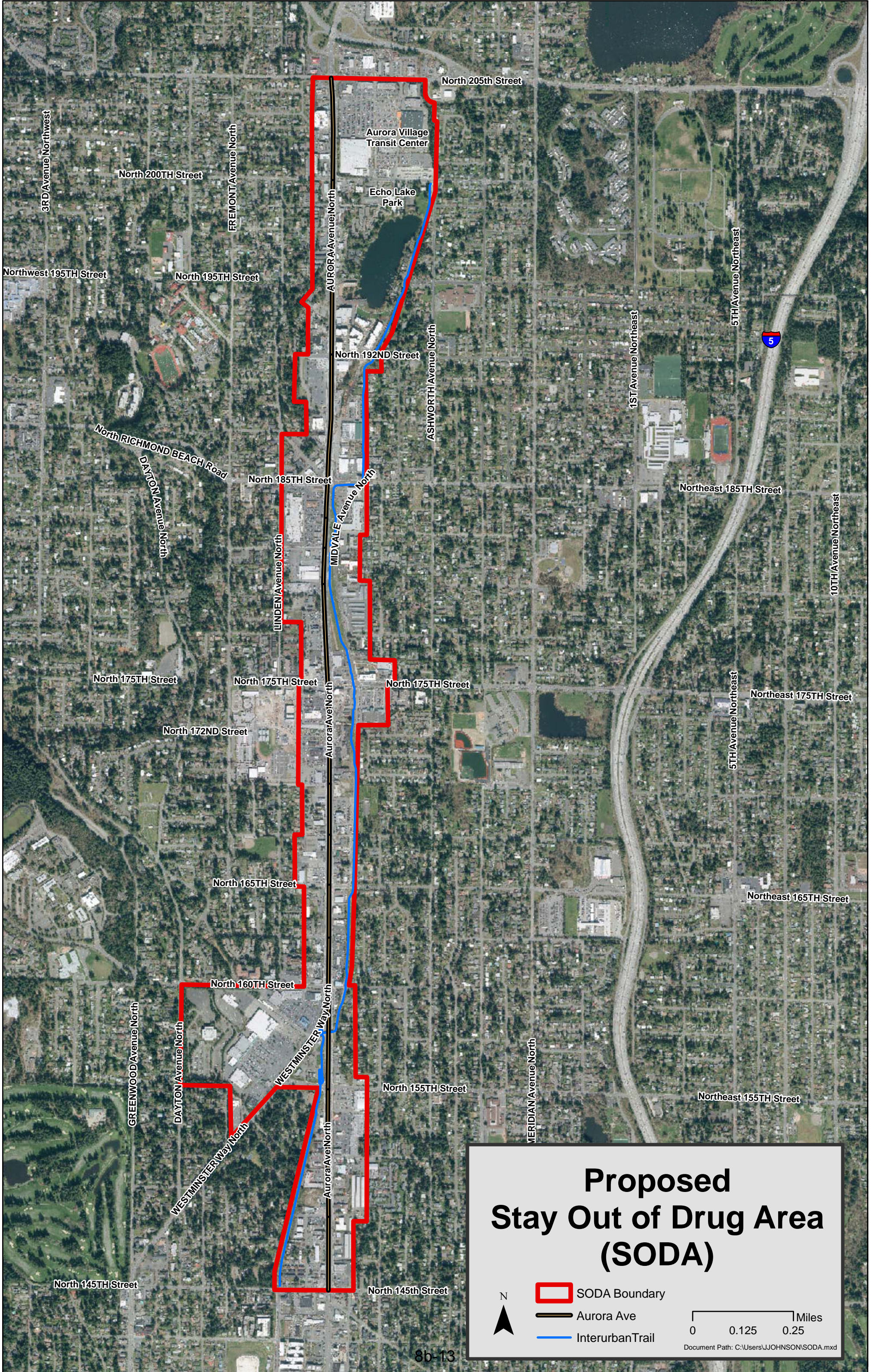
Drug Related Calls for Service and On-Views 3/1/09 through 2/28/14







Legend

Narcotic Activity within 250 ft Count

- 2-24
- 25-48
- 49-72
- 73-95
- 96-120
- ★ School



Proposed Stay Out of Drug Area (SODA)


 SODA Boundary
 Aurora Ave
 Interurban Trail

0 0.125 0.25 Miles
 Document Path: C:\Users\JJJOHNSON\SODA.mxd