SEATTLE CITY COUNCIL
CENTRAL STAFF

August 12, 2024

M E M O R A N D U M

To: Public Safety Committee
From: Council Central Staff
Subject: CB 120835 – Court Orders (SODA Zones)

On August 13, 2024, the Public Safety Committee will discuss Council Bill (CB) 120835, which would expand the Seattle Municipal Code (SMC) Criminal Code by establishing Stay out of Drug Area (SODA) zones, defining these zones as geographically circumscribed areas within which a high level of illegal drug activity is taking place. The bill would operationalize SODA zones by creating the authority for Seattle Municipal Court judges to issue SODA orders[1]. This provision would allow judges to issue SODA zone exclusion orders to (1) individuals charged with or convicted of drug offenses and (2) individuals charged with or convicted of assault, harassment, theft, criminal trespass, property destruction, or unlawful use or possession of weapons if the judge finds a nexus between that offense and illegal drug activity. Violation of a SODA order would be a gross misdemeanor, punishable by a maximum of 364 days in jail and/or a fine of up to $5000. Finally, CB 120835 would establish two SODA zones, in downtown Seattle and in the International District.

The bill also includes a required reporting component, intended to allow for the assessment of outcomes associated with SODA zone establishment. This memorandum describes the bill and discusses next steps.

Background

Exclusion orders

One way to think of an exclusion order is as a restraining order from a place rather than a person. An exclusion order is a court order requiring an individual to remain outside of a specified area or areas due to the combination of (1) the individual's charge for, or conviction of, a crime and (2) the documented occurrence of related crimes within the perimeter of the area or areas. In this sense, an exclusion order is a supervisory mechanism for someone who has had prior contact with the criminal justice system. Judges issuing them typically do so as a condition of pretrial release on bail, of a sentence, or of any alternative disposition. A SODA order is one type of exclusion order. Like a restraining order violation, a SODA order violation under CB 120835 would be a distinct crime, separate from any that an individual committed prior to the issuance of the order.

[1] SODA orders are thus a subset of court orders.

Stay Out of Drug Area (SODA) Zones and Orders

SODA zones as a law enforcement tool were developed in response to the organic emergence of open-air drug markets, which are generally defined as operating in geographically well-defined areas at identifiable times so sellers and buyers can easily locate one another.[2]

Several jurisdictions in the state, including Auburn, Arlington, and Everett, currently have SODA zones, and judges in their municipal courts may issue SODA orders. SODA orders restrict from areas in which drug-related crimes are prevalent individuals who have participated in, or who have been charged with, those crimes. When sellers and buyers of drugs know where to find each other, drug-related activity tends to become geographically concentrated, with negative impacts to the communities in which those concentrations occur. SODA orders also seek to decrease these impacts. The intent of this type of legislation is to disrupt this activity by means of excluding actors who have repeatedly contributed to it in SODA zones.

Although they are a law enforcement tool, SODA orders must be issued by a judge in order for a police officer to enforce a violation of such order. In addition to authorizing Seattle Municipal Court judges to authorize post-conviction SODA orders, CB 120835 would give them the authority to issue pretrial SODA orders in cases where an underlying criminal charge has not been proven, which would allow for the exclusion from a public space of a person who is still presumed innocent of the charged crime. In issuing such orders the judge would be bound by the requirements of CrRLJ 3.2, where the presumption is release without additional conditions.[3] SODA orders issued as a condition of sentence are lawful if they are reasonably related to the offense and tend to prevent the future commission of crime.

History of SODA in Seattle

Prior to 2010, SODA orders were occasionally issued by Seattle Municipal Court judges pursuant to the judiciary's authorized function of setting reasonable pretrial conditions of release and post-conviction conditions of probation. The Seattle Municipal Court presiding judge approved the SODA zones, the boundaries for which were drafted by the City Attorney's Office (CAO) based on SPD crime data. These zone boundaries, and the zones themselves, were not legislated by the Council, so SODA order violations were treated only as probation violations, not standalone crimes.

As a specific example of the use of SODA zones as a supervisory mechanism, in 2006 CAO partnered with the King County Prosecuting Attorney's Office (KCPAO) to address possession of trace amounts of controlled substances, such as residual crack cocaine in a pipe. Under that agreement, the Seattle Police Department (SPD) began to charge individuals arrested on this basis with Attempted Violation of the Uniform Controlled Substances Act (VUCSA), a gross misdemeanor. At their first court appearance, defendants were offered a choice between being charged by the KCPAO with felony VUCSA[4] or dismissal of the case in four months contingent on compliance with a SODA order for the area in which the arrest was made.

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[2] Harocopus, Alex, and Mike Hough, "Drug Dealing in Open Air Markets." Problem-Specific Guides Series No. 31, Community Oriented Policing Services, U.S. Department of Justice.

[3] CB 120835 provides for the termination of a SOAP order issued as a pretrial condition of release upon dismissal of the initial criminal charge.

[4] Most drug crimes are felonies and fall under the jurisdiction of KCPAO.

In 2012, the Executive responded to a Statement of Legislative Intent (SLI) included by Council in the 2012 budget. The SLI requested that the Executive "create a task force to identify actions needed to improve the functionality, urban design, safety and security of the downtown Third Ave Transit Corridor." It specifically directed the development of a pilot "hot spot"[5] policing initiative, using an evidence-based process, within targeted zones in that corridor. In the SLI response, the Executive noted that SPD was currently developing a SODA program for drug sellers in coordination with various City and County entities, including the courts. No SODA program was subsequently established.

In 2016, Mayor Ed Murray's Chinatown/International District Public Safety Action Plan referenced intent for CAO and SPD, working with the King County Superior Court, to impose SODA orders for "key individuals convicted of drug dealing in the C/ID." No SODA program was subsequently established.

Current Concerns

Substance use and the open-air buying and selling of drugs has persisted in the central downtown area for decades. As a 2022 Pacific NW Magazine article[6] describes, the epicenter of this activity has shifted during that time and its span has expanded and contracted, but most currently such activity is persistent in discrete areas of downtown and Belltown. In addition, because of the density of social-service and therapeutic care providers in Belltown, perpetrators of drug activity in this area impact those who are coming and going from such appointments, many of whom are trying to avoid drugs and re-establish more productive pathways. These individuals may be more vulnerable to those who are selling drugs and a diversion back into substance use and/or criminality may pose significant risks for them.

Drug activity (and related activity) poses both chronic and acute public-order and public-safety impacts to residents and businesses in these areas. It also has significant economic impacts in that it deters business and tourism activity and engenders property damage. SPD considers both of the proposed SODA zones in CB 120835 hot spots for crime. SPD believes that within these hot spots, a relatively small number of people engaging in illegal behaviors have an outsized impact on the localized criminogenic environment and that SODA orders would be an effective tool in mitigating these individuals' impact.

[5] "Hot spots" are areas in which a high density of crimes occur compared to surrounding areas.
[6] Kiley, Brendan, "Crime and Community Define One of Downtown Seattle's Most Complex Areas," Pacific NW Magazine. June 24, 2022.

CB 120835

Practical Effect of Legislation

CB 120835 would establish two SODA zones. The proposed boundaries of each SODA zone are based on analysis of SPD crime data. The bill would allow Seattle Municipal Court judges to issue a SODA order to anyone charged with, or convicted of

- Any misdemeanor or gross misdemeanor criminal violation of the Uniform Controlled Substances Act (RCW 69.50 as adopted by SMC 12A.09.020) occurring in a designated SODA area; and
- "Assault, harassment, theft, criminal trespass, property destruction, or unlawful use or possession of weapons occurring in a designated SODA zone in which the court finds a nexus between the offense and illegal drug activity."

In other words, there is a defined spectrum of criminal activity, both at the charging and conviction phases, that could subject an individual to a SODA order. The key phrase in the bill language is "nexus," or a causal connection. Studies have found that there is a consistent pattern of correlation between criminal drug violations and the other crimes listed above, reflecting such a causal link.

As an example of what the bill would permit, someone arrested for a drug crime (as described above) could be booked and charged for that crime and then arraigned before a Seattle Municipal Court judge. The judge, after finding probable cause, could require bail and issue a SODA order as a separate condition of the individual's release. The individual would then be required to remain outside one or both SODA zones[7] defined in the bill, absent any exceptions set by the judge. If an SPD officer encountered this individual in a SODA zone in violation of the court's active SODA order, that officer would have discretion to arrest the individual, who could then be booked for the SODA order violation. This violation would be a gross misdemeanor and subject to a maximum penalty of 364 days in jail and/or a fine of $5000. (As for any criminal offense, the actual sentence imposed would be at the discretion of the sentencing judge in Seattle Municipal Court.)

The bill also would allow an individual who has received a SODA order to request modification or termination of that order, and it describes the administrative processes for ensuring that SPD is made aware of newly issued SODA orders and that it removes information from its systems related to terminated SODA orders.

CB 120835 includes reporting requirements to assist in measuring its efficacy once implemented. It would require SPD, with input from CAO, to publish an annual report containing (1) per-zone data (including demographic data) on the issuance of SODA orders and arrests for SODA-order violations and (2) analyses of illegal drug trafficking and drug use in each SODA zone and the extent to which this localized enforcement may have driven criminal activity into surrounding areas. Although the bill would only create the two referenced SODA zones, the reporting requirement would apply to any zones subsequently legislated by Council. The bill would also require that Council review the effects of the establishment of SODA zones at least biennially.

[7] In the 2006-2009 CAO/KCPAO program, SODA orders only applied to the SODA zone in which the initial Attempted VUCSA charge was made. CB 120835 would permit broader exclusion.

SODA Order Violation as New Crime

A judge's latitude to issue conditions to an individual's pretrial release or to create conditions to a probation sentence is discussed above. For instance, a judge could require that a person on probation for using drugs in public refrain from using drugs. If the individual used drugs, probation could be revoked and the individual remanded to carceral custody. In this scenario, the individual's use of drugs is a violation connected to the initial offense of drug selling; the use of drugs is not a new crime.

As previously noted, CB 120835 would create the new gross misdemeanor of violation of SODA order violation. If a judge issued a SODA order to the same individual as considered above and that individual violated the SODA order, the violation would be a new and separate offense with its own discrete penalties. This might be seen as analogous to a judge issuing a no-contact order in the context of an assault. Violation of the no-contact order represents a new criminal violation, distinct from and in addition to the alleged or actual assault. The crime of violating a SODA order can be proven on the basis that an individual was (1) subject to and had notice of an active SODA order and (2) willfully violated the terms of that order by entering into or remaining within the prohibited area. In contrast to the elements of the initial drug crime, violation of a SODA order is less fact intensive and may be more straightforward to prosecute.

Anticipated Impact on Existing Criminal Activity

According to SPD, in broad strokes the goal of SODA orders is to disrupt a crime hotspot in order to help restore public order, improve public safety and quality of life for area residents, invite lawful behavior, and foster lawful economic activity. When individuals with disproportionate criminogenic impact may be excluded from an area or areas where crime is concentrated, their exclusion may also be experienced disproportionately in a positive way. SODA orders also expand the ability of SPD officers to engage in proactive policing in pursuit of the same improvements in that they would create a lawful basis for contact with such individuals. Based on their experience policing drug hotspots, SPD reports that some individuals who spend significant time in these areas have warrants for their arrest, including for felony violations. The ability to engage with individuals believed to be subject to a SODA order – based on reasonable and articulable suspicion – would increase SPD officers' ability to detain and arrest those whose presence poses a risk of harm to themselves or to others and contributes to a localized environment of criminality. Such detainments and arrests could also support ongoing SPD investigations of criminal enterprises that manifest, in part, within hotspot areas.

Assuming that Seattle Municipal Court judges act on the authority provided by CB 120835, SPD would consider SODA orders a valuable tool in disrupting drug hotspots. Other ongoing efforts would also support that goal, for instance increased hiring of police officers and technology initiatives that provide greater evidentiary basis for criminal charges and investigations.

The proposed SODA zones are not anticipated to reduce public drug use generally, and due to the nature of addiction and to the lucrativeness of illegal drug enterprises, it is likely that some visible drug use and drug dealing, and the crimes that often accompany them, will persist in the downtown area.

Fiscal and Operational Impact

SPD would bear some additional costs associated with a new role in the enforcement of SODA orders as described in CB 120835. CAO would also incur incremental new costs associated with the proposed expanded prosecutorial purview, as would the Seattle Municipal Court for its roles in adjudication and sentencing. The City would also face additional costs associated with providing legal defense services for those facing additional charges or court-ordered restrictions. For all these entities, those costs will depend on the number of cases that are referred for charging, but the increase could be significant and sudden. The reporting requirements in the bill would pose new obligations for both SPD and CAO. It is currently not possible to develop an estimate of the direct fiscal impacts of this bill.

The City is currently finalizing an interlocal agreement with the South Correctional Entity (SCORE) for the provision of jail services additive to those currently provided by King County at the King County Jail (KCJ). Specifically, the agreement will detail the operational and policy framework by which the City will use 20 SCORE beds for the booking of misdemeanor detainees. Ongoing constraints at KCJ have affected its capacity such that the City has access to fewer such beds there than was the case in 2019. To the extent that CB 120835 increases demand for jail beds – by virtue of a Seatle Municipal Court judge sentencing an individual to jail time for a SODA order violation – there will be additional cost to the City. The 20-bed SCORE contract has an estimated cost of $2 million, exclusive of any costs related to transportation or detainee defense.

Issues for Consideration

Judicial authority and discretion: As described above, CB 120835 would give Seattle Municipal Court judges explicit authority to issue a SODA order in cases involving drug crime and in cases where they find a nexus between the charge or conviction for "assault, harassment, theft, criminal trespass, property destruction, or unlawful use or possession of weapons" and drug crime. It is possible that given the same evidence to evaluate in making that determination, different judges will make different articulable findings about whether or not such nexus exists. The high amount of judicial discretion vested in courts of limited jurisdiction (such as the Seattle Municipal Court) allows for divergent outcomes from similar fact patterns.

CB 120835 would present Seattle Municipal Court judges with two distinct opportunities to exercise their discretion. First, they may find a nexus between a charge and defined categories of criminal conduct and issue a SOAP order on the basis of this finding. Second, they may authorize exceptions to the SOAP order, for instance to see family, to attend medical or social appointments, to fulfill work commitments (the bill references such exceptions). The degree to which judges would act on those opportunities is unknown at the time of this memo's publication.

SPD enforcement capacity: As of April, SPD had 913 deployable officers, a reduction from the pre-Covid figure of approximately 1400. With the support of Council and the Executive, the department is making significant investments in the recruiting and retention of officers, but any new enforcement responsibility must be balanced with existing workload in a resource-constrained environment, and the staffing deficit will require years of steady gains to overcome. By providing a lawful basis to contact and detain individuals known by SPD to frequent drug hotspots for the purposes of using or dealing drugs, SODA orders may provide a mechanism for promoting more efficient and effective patrol operations in these hotspots.

Efficacy of SODA zones and orders: Central Staff have not found any rigorous evaluations suggesting that the use of SODA orders (when issued by judges and comprehensively enforced by police departments) have the effect of improving public order, public safety, quality of life, and economic vibrancy. In preparing this memo, Central Staff met with subject matter experts from the Comprehensive Opioid, Stimulant, and Substance Use Program (COSSUP) Training and Technical Assistance unit, and they discussed with us several areas of ongoing research and shared relevant research papers.[8] They acknowledged that it would be difficult to design a study that conclusively proved, based on data, whether SODA orders were effective across one or more of these dimensions, and the information they shared with us was generally qualitative and meta-analytical. [9]

Some research suggests that when exclusion orders that target drug-related crimes[10] are in place, they may only encourage recidivism and do not address the underlying drug dependencies. A meta-analysis of the effectiveness of pretrial release conditions including community supervision (but not explicitly including SODA orders) found that these conditions had no effect on re-arrest. A similar meta-analysis (again, not explicitly including SODA orders) concluded that access to services, such as substance use and mental health treatment, played a significant role in whether the imposed conditions were effective. Central Staff had limited time to engage with the full body of research about pretrial release conditions and SODA orders.

SPD believes that the impacts of CB 120835 would not be best measured by statistics such as number of arrests for violating a SODA order. The department would instead endorse a more holistic means of evaluating the impact of new SODA zones that took into account foot traffic, business activity, and the perceptions of residents, visitors, and merchants as well as those of law enforcement stakeholders and the various community groups who are frustrated by current conditions in the proposed SODA zones.

During the 2006-2009 period during which the CAO/KCPAO partnership was in effect, there were a total of 1310 VUCSA cases filed. Across this group, in 208 cases defendants opted to be charged with felony VUCSA by KCPOA and 1082 agreed to abide by a SODA order for four months and case dismissal if they did not violate that order. In 83 percent of the SODA cases, defendants did not violate their orders, and in 58 percent of them defendants did not commit another Attempted VUCSA. CAO concluded that the program as then constituted appeared to be “achieving its goal of limiting drug users’ return to open air drug markets.”

[8] Our thanks to Sarah Duhart Clarke, Catherine Grodensky, and Abigail Rinderle.

[9] Meta-analyses combine the results of multiple studies that address a similar research question. They seek to develop a single conclusion that is stronger than any one study’s result, but the goal of this conclusion is to be generalizable.

[10] Such orders are called red zone orders in Canada, where some of the described research was conducted.

Risk of displacement: Paradoxically, one way to determine whether an open-air drug market has been disrupted is that this activity begins to develop in a new area or disperse to one or more new areas in a less concentrated manner. Researchers have noted that a jurisdiction's use of exclusion orders tends to become more expansive over time, with individuals subject to these orders gradually becoming excluded from more areas. Last year, the Everett City Council added two city parks to its list of SODA zones, allowing judges to bar individuals from entering those parks. News coverage of this legislative change noted that Everett was considering a further SODA program expansion, which would include "other parks and properties."[11]

Such program expansion not only curtails individuals' liberty but may foster a larger social bifurcation, for instance one in which community members recognize that there are bad places (SODA zones) and good places and/or that the criminal justice system has taken from some people the ability to move freely around their cities while others retain the privilege.

Potential increased overdose risk when a user's access to drugs is interrupted: Efforts to disrupt drug markets can cause unintended harm to those with substance use disorder (SUD) who rely on access to those markets. A 2023 study[12] found that seizures of drugs by law enforcement were associated with fatal overdose in the surrounding geographical areas within the following three weeks. Its authors hypothesize that when those with SUD tried to obtain drugs in new ways, they accepted greater risks, which led to the inadvertent taking of familiar drugs in higher concentrations or the taking of unfamiliar drugs. To the extent that those receiving SODA orders in the future need to find new places to get drugs, they may take on such risks.

Need for therapeutic services: As noted above, a study found that the efficacy of supervisory mechanisms such as SODA orders was correlated with whether or not those subject to them had access to services such as substance use and mental health treatment. CB 120835 does not address this correlation or reference the potential need for additional therapeutic funding for diversion services for drug offenders.

Race and Social Justice Considerations

Root causes: In many cases, an individual's engagement in the behaviors described in CB 120835 and proposed for new criminalization have their roots in such factors as poverty, food and/or housing insecurity, lack of access to support resources or fearfulness about accessing them based on immigration status, and lack of remunerative employment opportunities. Meaningfully addressing these root causes, as a long-term strategy for improving public order and public safety issues, is beyond the scope of this bill.

[11] Rivera, Paul, KOMO News, "Everett City Council expands drug enforcement zones to tackle hot spots in local parks." June 30, 2023

[12] Ray, B., Korzeniewski, S.J., Mohler, G., Carroll, J., del Pozo, B., Victor, G., Huynh, P., & Hedden, B. J. (2023). Spatiotemporal analysis exploring the effect of law enforcement drug market disruptions on overdose, Indianapolis, IN, 2020-2021. *American Journal of Public Health, 113*(7):750–758.

Potential for real and/or perceived discriminatory enforcement: CB 120835 would allow SPD officers to approach and engage with an individual in a SODA zone based on the reasonable and articulable suspicion that the individual is knowingly violating an active SODA order. (The applicable legal standard for this type of brief detention, also known as a *Terry* stop, is a suspicion based on articulable facts that the individual is engaged in criminal activity.) The operational guidelines for such approach have not been developed. It is possible that perceived discriminatory enforcement of suspected SODA orders may foster new tensions between police and those in SODA zones. It is SPD's practice to track and analyze police contacts for any disparate outcomes, and the department believes it will be able to measure any such outcome and work to mitigate it.

Impacts of SODA orders on those subject to them: Black, Indigenous, and People of Color (BIPOC) individuals are disproportionately charged with, and convicted of, the crimes for which CB 120835 would allow a judge to issue a SODA order. One outcome of CB 120835 could be that BIPOC individuals and those from historically vulnerable communities, having been issued SODA orders, are displaced from lawful activity in increasingly large areas of the city.

Research shared by the COSSUP group suggests that SODA orders may have various negative impacts to individuals' daily lives. These include the creation of new costs and constraints (for instance, with respect to transit through a city), the creation of barriers to housing, and the curtailment of employment possibilities. A SODA order may also be an impediment to integration with the community as one who has become law abiding after an initial conviction. Research authors concluded anecdotally that exclusion orders were not successful in helping their recipients deal with "issues of drug addiction and poverty." A witness in a Canadian court case that challenged the imposition of a red-zone order observed that "red zones make poor people feel poorer."[13] With respect to the proposed International District SODA zone, it may exclude BIPOC individuals from the area who have a strong longtime cultural orientation to it.[14]

The proposed downtown SODA zone includes the blocks that are the locus of the City's Third Avenue Project (TAP), a milieu management project that seeks to mitigate street disorder and connect people with needed resources. As of May 2024, over 90 percent of those contacted by TAP staff reported that they live unsheltered. Those involved in outreach and diversion services in the TAP catchment area have shared the perspective that some TAP contactees may congregate in this area because it constitutes their social environment and/or because they feel safer among others. They would lose this sense of security and acceptance if they were issued SODA orders excluding them from the area. Jurisdictions that implement new exclusion-order programs may want to consider committing to ongoing, qualitative racial and social equity analysis.

[13] Cited in Sylvestre, Marie-Eve, Dominque Bernier, and Celine Bellot, "Zone Restriction Orders in Canadian Courts and the Reproduction of Soci-Economic Inequality." Oñati Socio-legal Series [online] 5 (1), 280-297

[14] Author's conversation with Lisa Daugaard of Purpose. Dignity. Action. July 12, 2024.

Next Steps

The Public Safety Committee plans to vote on CB 120835, including any proposed amendments, on September 10. The bill could then be voted on by the City Council on September 17.

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