

To: Whom It May Concern  
From: Robert Straughn and Jane Prince  
Re: Proposed Window Sign Amendments

PED has raised a concern that the amendments proposed by Councilmember Thune would not apply to window signage already in place, as such existing window signage might in some fashion be "grandfathered" in. You have asked us to assess their concern.

The term "grandfathered" refers to the right of a property owner to continue a nonconformity after a change in the zoning ordinance if the nonconformity was legal before the change. After the change in the ordinance, the continuing use is often referred to as a "legal nonconformity".

The right to continue a legal nonconformity was codified by a change in state law in 2001. Municipalities are given the power to enact zoning ordinances under Minnesota Statutes, section 462.357. In 2001, section 462.357 was amended to add subdivision 1e regarding nonconformities. Subdivision 1e was further revised in 2004.

Minnesota Statutes, section 462.357, subdivision 1e, reads, in relevant part:

"(a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year; or

(2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, ...

(b) .... A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. ...."

Saint Paul regulates signs under chapter 64 of the Saint Paul Legislative Code. Signs are defined in section 64.121 as: "The use of words, numerals, figures, devices, designs or trademarks the purpose of which is to show or advertise a person, firm, profession, business, product or message." The definition does not distinguish between exterior signs and signs placed inside a window.

Article 64.500 sets out the sign regulations by zoning districts. Section 64.501 provides that: "The class, size and location of signs shall be only as permitted and regulated in the zoning districts authorized or permitted in this chapter."

“(l) To deter crime through environmental design by improving visibility from a business into the street and from the street into a business;”

This change carries forward the city’s previous adoption of "Crime Prevention Through Environmental Design" (CPTED) models for crime prevention. One of the most effective CPTED methods for deterring crime is natural surveillance. Natural surveillance seeks to maximize visibility of people, parking areas and building entrances, including visibility through doors and windows that look out onto streets and parking areas. Research into criminal behavior demonstrates that the decision to commit a crime is influenced more by the perceived risk of being caught than by the potential reward or ease of committing the crime. Excessive window signage blocks the visibility into and out of a business that is needed to influence the decision to carry out a criminal act.

The city has the fundamental power and moral obligation to protect the health, welfare and safety of its citizens. This includes the power to provide for the prevention of crime. CPTED models for crime prevention demonstrate that preventing excessive window signage from blocking the visibility into and out of a business promotes natural surveillance and deters crime.

The power to prevent crime is a general power of the city that stands alongside of, but is not subsumed into, the power granted the city to enact zoning regulations. It is inherently reasonable for the city under its general powers to impose regulations on the amount and placement of window signs for the purpose of deterring crime. Such regulations are enforceable on their own merits, whether or not they are inserted into the zoning code.

The Thune amendments only affect temporary signs, which by their very nature are temporary and will be removed in short order whether or not the amendments are passed. The Thune amendments do not take away the right to maintain window signs; they merely impose reasonable regulations on such signs in order to protect the public from crime. The city’s right to impose reasonable regulations on nonconformities is specifically recognized under state law. The crime prevention regulations contained in the Thune amendments are grounded in the city’s general police power. PED’s claim that a property owner’s “grandfathered” rights stand in the way of the city imposing such crime prevention regulations on temporary window signage is misguided.