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# Committee Report

**CONSENT CALENDAR**

**February 27, 2019**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Commerce and Consumer Affairs to  
which was referred HB 561,**

**AN ACT relative to zoning ordinances for formula  
businesses. Having considered the same, report the  
same with the following resolution: RESOLVED, that it  
is INEXPEDIENT TO LEGISLATE.**

**Rep. Christy Bartlett**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

|                   |   |
|-------------------|---|
| Committee:        | Commerce and Consumer Affairs                         |
| Bill Number:      | HB 561  |
| Title:            | relative to zoning ordinances for formula businesses. |
| Date:             | February 27, 2019                                     |
| Consent Calendar: | CONSENT   |
| Recommendation:   | INEXPEDIENT TO LEGISLATE                              |

### STATEMENT OF INTENT

Though we understood the intent of this bill was to protect local businesses from unfair competition from large retail establishments, the committee felt that this bill was over-reaching its' intent. All towns prefer to control their own destinies and this bill would restrict towns from bringing in even locally-owned businesses if there were over 14 locations. It was felt that a good, locally-owned business needs to stand by itself for quality of product and service and that the towns and markets will need to make their own decisions about which businesses to welcome and support.

Vote 20-0.

Rep. Christy Bartlett  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### Commerce and Consumer Affairs

**HB 561**, relative to zoning ordinances for formula businesses. **INEXPEDIENT TO LEGISLATE.** Rep. Christy Bartlett for Commerce and Consumer Affairs. Though we understood the intent of this bill was to protect local businesses from unfair competition from large retail establishments, the committee felt that this bill was over-reaching its' intent. NH towns prefer to control their own destinies and this bill would restrict towns from bringing in even locally-owned businesses if there were over 14 locations. It was felt that a good, locally-owned business needs to stand by itself for quality of product and service and that the towns and markets will need to make their own decisions about which businesses to welcome and support. **Vote 20-0.**

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Commerce Committee

HB561

Relative to zoning ordinance for formula businesses

ITL 20-0

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Rep Christy Dolat Bartlett

OK

A handwritten signature in black ink, appearing to read "Christy Dolat Bartlett", enclosed within a hand-drawn oval.

# Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 561

**BILL TITLE:** relative to zoning ordinances for formula businesses.

**DATE:** February 13, 2019

**LOB ROOM:** 302

**MOTIONS:** INEXPEDIENT TO LEGISLATE

Moved by Rep. Bartlett

Seconded by Rep. Williams

Vote: 20-0

CONSENT CALENDAR: YES

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Rebecca McBeath, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 561

BILL TITLE: relative to zoning ordinances for formula businesses.

DATE: 2/13/19

LOB ROOM: 302

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. Bostlett Seconded by Rep. Williams Vote: 20-0

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

CONSENT CALENDAR:  YES  NO

Minority Report? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, author, Rep: \_\_\_\_\_ Motion

Respectfully submitted: [Signature]  
Rep Rebecca McBeath, Clerk





2019 SESSION

Commerce and Consumer Affairs

Bill #: HB 561 Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 2/13/19

| <u>Members</u>                           | <u>YEAS</u> | <u>Nays</u> | <u>NV</u> |
|--|-------------|-------------|-----------|
| Butler, Edward A. Chairman               | ✓           |             |           |
| Williams, Kermit R. Vice Chairman        | ✓           |             |           |
| <del>Ridge, Kenneth N.</del> <u>Town</u> | ✓           |             |           |
| Abel, Richard M.                         | ✓           |             |           |
| McBeath, Rebecca Susan Clerk             | ✓           |             |           |
| Bartlett, Christy D.                     | ✓           |             |           |
| Herbert, Christopher J.                  | ✓           |             |           |
| Van Houten, Constance                    | ✓           |             |           |
| Fargo, Kristina M.                       | ✓           |             |           |
| Indruk, Greg L.                          | ✓           |             |           |
| Muscatel, Garrett D.                     | ✓           |             |           |
| Neston, Joyce                            | ✓           |             |           |
| Hunt, John B.                            | ✓           |             |           |
| Sanborn, Laurie J.                       | ✓           |             |           |
| Osborne, Jason M.                        | ✓           |             |           |
| Costable, Michael                        | ✓           |             |           |
| Plumer, John R.                          | ✓           |             |           |
| Barnes, Arthur E.                        | ✓           |             |           |
| Potucek, John M.                         | ✓           |             |           |
| Narden, Mark                             | ✓           |             |           |
| TOTAL VOTE:                              | <u>20</u>   | <u>0</u>    |           |

# Sub-Committee Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

**SUBCOMMITTEE WORK SESSION** on HB 561

**BILL TITLE:** relative to zoning ordinances for formula businesses.

**DATE:** February 7, 2019

**Subcommittee Members:** Reps. Williams, Abel, Herbert, Indruk, Plumer and Warden

**Comments and Recommendations:**

**MOTIONS:** INEXPEDIENT TO LEGISLATE

Moved by Rep. Rep. Indruk

Seconded by Rep. Rep. Warden

Vote: 6-0

Respectfully submitted,

Rep. Kermit Williams  
Subcommittee Chairman

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

**SUBCOMMITTEE WORK SESSION** on HB 561

**BILL TITLE:** relative to zoning ordinances for formula businesses.

**DATE:** 2-7-19

**Subcommittee Members:** Reps. Butler, Williams, McBeath, Gidge, Abel, Bartlett, Herbert, Van Houten, Fargo, Indruk, Muscatel, Weston, Hunt, Sanborn, J. Osborne, Costable, Plumer, Barnes, Potucek and Warden

**Comments and Recommendations:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MOTIONS:** OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)  
(Please circle one)

Moved by Rep. Indruk Seconded by Rep. Warden AM Vote: 6-0  
Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_  
\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

**MOTIONS:** OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)  
(Please circle one)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_  
Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_  
\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

Respectfully submitted,

Rep. \_\_\_\_\_  
Subcommittee Chairman/Clerk

# Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 561

**BILL TITLE:** relative to zoning ordinances for formula businesses.

**DATE:** February 7, 2019

**LOB ROOM:** 302

**Time Public Hearing Called to Order:** 1:15 pm

**Time Adjourned:** 1:48 pm

**Committee Members:** Reps. ~~Butler~~, ~~Williams~~, ~~McBeath~~, Gidge, ~~Abel~~, ~~Bartlett~~, Herbert, ~~Van Houten~~, ~~Fargo~~, ~~Indruk~~, ~~Muscate~~, ~~Weston~~, ~~Hunt~~, Sanborn, ~~J. Osborne~~, Costable, Plumer, ~~Barnes~~, ~~Potucek~~ and ~~Warden~~

**Bill Sponsors:**

Rep. Vann

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Ivy Van, sponsor** - Enabling legislation to allow localities to adopt zoning ordinances for business restrictions. Lets towns make decisions regarding what type of business they want in certain areas of town. Since 2001 some jurisdictions in the US have adopted this type of ordinances.

**Q: Rep. John Potluck** - Would this bill include Dunkin Donut and Wal-Mart?

**A:** Yes. It is an all or nothing bill. Otherwise it intervenes the Commerce clause.

**Q:** Does this in effect constitute a restraint on trade?

**A:** The legal challenges that I have read have not been upheld.

**Q: Rep. John Hunt** – Peterborough has a zoning ordinance against drive-through?

**A:** Yes. This bill says that we want our business locally owned and operated. Towns that have restrictions against drive through are trying to discourage car traffic, and encourage foot traffic.

**Q: Rep. Kermit Williams** - Where this type of law has worked, it carves out certain aspects of a formula business, to use different external features etc.

**A:** Communities for local reliance is who helped write this bill, we are not trying to get away with more than we are able to. There is overlap between the architectural issues and what your sell issue.

**Q: Rep. Richard Abel** - Definition of a formula business?

**A:** The institute for local Self-reliance is the source of the definition of formula business in this bill.

**Q:** Will this definition be clear enough regarding what is and isn't a formula business?

**A:** I think yes. A municipality will have to be very careful in writing their ordinance.

**Q: Rep Constance Van Houten** - What is the definition of "any legislative body"? Say a school board?

**A:** No. You can only write zoning ordinance if you have that authority outside this bill.

**Jon Dumais, NH Grocers Assn.** - Opposes. Concerned about cross the boarder sales. Tourism Trade, confusion between town to town. If towns start restricting who can do business in the town its not good for the town in the long run. This bill promotes home rule and we are against a patchwork quilt of regulations across the state. It is not unusual that an owner of more than one store locations within the state - if this means different regulations in each location its difficult to run the business.

**\*Curtis Barry, NH Retail Assn.** - Opposed. This bill asks you to discriminate on a business model. The Zoning law I have passed out is examples of the detail town have now. It is not an example of what type of regulations would be allowed under this bill. This bill would apply to Franchised businesses as well.

**Rep Kermit Williams-** You believe that this bill would prevent a permitted use under the present local zone ordinances?

**A:** Yes. Absolutely. This applies to a vast array of type of business.

**Q: Rep. Christy Dolat Bartlett** - Has Peterborough already passed this legislation?

**A:** I don't know. Under this bill the time a franchise got to 14 locations this bill would click in.

**Q:** Would a town still have to pass this bill, before any of the consequences you are stating are a long way off?

**A:** Yes. The towns would have to adopt the specific ordinances.

**Rep. John Potueck** - The model of Great American Restaurants, whose master business model would fit into the category of formula business in the bill.

**Chairman Ed Butler** - Policies that come before this Committee frequently "discriminate" between different interests.

**A:** What is available to municipalities currently fit the bill, without enacting this bill.

**\* Henry Veilleux, NH lodging & Restaurant Assn.** - Opposes.

Respectfully Submitted:

A handwritten signature in blue ink, appearing to read 'R. McBeath', with a long horizontal flourish extending to the right.

Rebecca McBeath, Clerk



HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 561

BILL TITLE: relative to zoning ordinances for formula businesses.

DATE:

ROOM: 302

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Bill Sponsors:

Rep. Vann

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

- \* #1 Iny Vann, Peterborough, NH Prime Sponsor
- #2 John Demais, NH Grocerers Assn
- \* #3 Curtis Barry, NH Retail Assn.
- \* #4 Henry Veilleux, NH Lodging & Restaurant Assn

Chair opens the hearing on HB 561 at 1:15 pm 2-7-19  
Supports bill

Enabling legislation to allow localities to adopt zoning ordinances for business restrictions. Lets towns make decisions regarding what type of business they want in certain areas of town.

Since 2001 some jurisdictions in the US have adopted this type of ordinances.

QPotucek: Would this bill include Duncin Donut and Walmart?

A: Yes. It is an all or nothing bill. Otherwise it intervenes the Commerce clause.

Follow up Potucek: Does this in effect constitute a restraint on trade?

A: The legal challenges that I have read have not been upheld.

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A: I think yes. A municipality will have to be very careful in writing their ordinance.

Q: Van Houten: What is the definition of "any legislative body"? Say a school board?

A: No. You can only write a zoning ordinance if you have that authority outside this bill.

#2 Jon Dumais, NH Grocers Assn.  
opposes the bill

Concerned about cross the boarder sales.

Tourism Trade, confusion between town to town. If towns start restricting who can do business in the town its not good for the town in the long run.

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\* #3 Curtis Barry, NH Retil Assn.

Opposed to bill

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Comment Chair Butler: Policies that come before this Committee frequently "discriminate" between different interests.

A: What is available to municipalities currently fit the bill, without enacting this bill.

\* #4 Henry Veilleux, NH lodging & Resturant Assn

Opposes bill

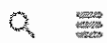
Rep Fargo read the blue sheet.



# Testimony



\*A1 HB 561



# Formula Business Restrictions

by Stacy Mitchell | Date: 1 Dec 2008 |



A growing number of cities and towns are enacting policies that restrict the proliferation of “formula businesses” — stores and restaurants that have standardized services, décor, methods of operation, and other features that make them virtually identical to businesses elsewhere.

Having saturated malls and other shopping areas, many formula retailers and restaurants are increasingly locating in downtowns and neighborhood business districts. Because they all like to follow one another, it’s not uncommon for formula businesses to arrive in an area en masse, squeezing out independents and causing a speculative run-up in rents that results in the wholesale transformation of a business district almost overnight.

This can have long-term economic consequences as the downtown or neighborhood business district loses its distinctive appeal and no longer offers opportunities for independent entrepreneurs. Low-margin businesses that meet the basic needs of surrounding neighborhoods, such as grocers and pharmacies, may be pushed out as rents rise and the area attracts more formula restaurants and apparel stores. Perhaps of greatest concern, formula businesses tend to be fair-weather friends and can disappear quickly when the economy contracts or their corporate strategy shifts.

To prevent and mitigate these problems, some cities and towns have adopted ordinances that prohibit formula businesses, cap their total number, or require that they meet certain conditions to open. A ban on formula businesses does not prevent a chain such as Starbucks from coming in, but it does require that Starbucks open a coffee shop that is distinct — in name, operations, and appearance — from all of its other outlets. Although there are a few examples of a chain complying with a formula business ordinance by opening a unique outlet, in most cases, they refuse to veer from their cookie-cutter formula and opt not to open.

See [Dollar Store Dispersal Restrictions](#) for another approach to restricting certain types of retailers while supporting balanced, local development, in this case by limiting their density.

## Key Decisions in Drafting a Formula Business Ordinance

1. Will the ordinance apply only to certain zones or be citywide? Many formula business ordinances are citywide measures, but they may also be written to apply only to a specific area within the community. **Fredericksburg, Texas**, and **Bristol, Rhode Island**, regulate formula businesses in their downtowns. **San Francisco** restricts formula businesses in all of its neighborhood business districts, but not in its downtown core and tourist areas. **Port Townsend, Washington**, and **Chesapeake City, Maryland**, prohibit formula businesses everywhere except a single highway commercial zone on the outskirts of town.

- What types of formula businesses should be regulated?

Some cities prohibit only formula restaurants. Others have placed restrictions on both formula restaurants and retail stores.

INDEPENDENT BUSINESS HOME

## GET OUR NEWSLETTER

Sign up for Hometown Advantage, our monthly newsletter on countering monopoly and creating community-scaled economies.

\* indicates required

Email Address \*

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## RESOURCES BY TYPE

### All Articles

Browse all of our past features and posts.

### Audio and Video

Podcasts, media interviews, and presentations from our team.

### Books and Reports

In-depth analysis and reporting.

### Fact Sheets and Infographics

Facts and stats to help you make the case.

### Maps and Graphs

Ways to visualize our research.

## FEATURED TOPICS

### Amazon

### Monopoly

### Policy Tools

### Why Local

## SUPPORT OUR WORK

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- Should the measure prohibit formula businesses altogether, cap their number, or make them a conditional use subject to case-by-case review and approval?

About half the policy examples included below ban formula businesses outright. Others cap their number. **Arcata, California**, for example, allows no more than nine formula restaurants in the city at any one time. **McCall, Idaho**, limits formula businesses to no more than 10 percent of the total number of “like businesses” in town (i.e., no more than 10 percent of restaurants, 10 percent of clothing stores, etc.).

Still another approach is to designate formula businesses as a conditional use subject to case-by-case review by either the planning board or the city council. A formula business that wishes to open in any of **San Francisco's neighborhood business districts**, for example, must obtain approval from the planning commission. The law states that, in making its decision, the commission must consider: the existing concentration of formula businesses within the neighborhood, whether similar goods or services are already available, compatibility with the character of the neighborhood, retail vacancy rates, and the balance of neighborhood-serving versus citywide or regional-serving businesses.

Cities may combine these approaches. **Coronado, California**, for example, caps the number of formula restaurants (no more than 10 at one time) and treats formula retail stores as a conditional use. **Bristol, Rhode Island**, bars formula businesses larger than 2,500 square feet from its downtown. Smaller formula businesses are allowed provided the town determines they will not detract from the district's uniqueness or contribute to the “nationwide trend of standardized downtown offerings.” **Port Townsend, Washington**, restricts formula businesses to a single highway commercial zone and, within that zone, limits them to no more than 3,000 square feet.

### Legal Issues

When enacting a formula business ordinance, a city should articulate within the ordinance and its legislative history the public purposes the law will serve and specify how the restrictions will fulfill those purposes. This is key to crafting a sound ordinance that will not be susceptible to legal challenges. The ordinance should reference the city's comprehensive plan, identifying goals within the plan that a formula business restriction will help to fulfill. These commonly include:

- Maintaining the unique character of the community and the appeal of its commercial district
- Protecting the community's economic vitality by ensuring a diversity of businesses with sufficient opportunities for independent entrepreneurs
- Fostering businesses that serve the basic needs of the surrounding neighborhood, rather than those oriented toward tourists or regional shoppers

There have been two court challenges to formula business ordinances.

A **California Appeals Court decision** upheld Coronado's formula retail ordinance in June 2003 after several property owners challenged the law. The court ruled that the ordinance does not violate the US Constitution's commerce and equal protection clauses, and is a valid use of municipal authority under California state law.

Most of the decision deals with the property owners' contention that the law discriminates against out-of-state companies and thereby violates the Constitution's dormant commerce clause. The court found that the law does not in fact “impose different regulations on interstate as opposed to intrastate businesses, nor does it distinguish between those businesses that are locally owned and those that are owned by out-of-state interests.” The court noted the law focuses on whether the store is contractually required to have standardized features, regardless of whether it is part of a national chain or owned by a California resident.

The court also ruled that the law did not have a discriminatory purpose. The ordinance's lengthy preamble states that the city seeks to maintain a vibrant and diverse commercial district, and that the unregulated proliferation of formula businesses would frustrate this goal and lessen the commercial district's appeal. The court concludes that this is a legitimate purpose, noting that "the objective of promoting a diversity of retail activity to prevent the city's business district from being taken over exclusively by generic chain stores is not a discriminatory purpose under the commerce clause."

The court also dismissed the equal protection and state law challenges, stating that the ordinance is rationally related to a legitimate public purpose.

In 2008, a federal district court overturned a formula business ordinance adopted by the town of Islamorada, Florida. The ruling was subsequently confirmed by an **11th Circuit Court decision**. Islamorada's ordinance limited formula businesses to no more than 2,000 square feet and 50 linear feet of storefront. Although the court said that preserving distinctive community character was a legitimate public purpose for enacting a formula business ordinance, it ruled that Islamorada had not demonstrated that this was in fact the purpose of the law. Local officials had instead revealed that the true purpose was protecting particular local businesses.

Moreover, the court noted that Islamorada, which has no downtown or other historic commercial district and consists instead of strip development along U.S. Highway 1, had taken no other steps to develop or protect its distinctive character. Sites already occupied by formula businesses have been redeveloped as new formula businesses with no objection from city officials.

*For additional resources on legal questions with formula business ordinances, see below, and in particular, this guide: "A Guide to Regulating Big-Box Stores, Franchise Architecture, and Formula Businesses," [PDF] Daniel A Spitzer and Jill L. Yonkers, New York Zoning Law and Practice Report, January 2007.*

#### More Information:

- **"In Jersey City, a Policy Fosters Local Independent Businesses,"** Olivia LaVecchia, *Institute for Local Self-Reliance*, Dec., 2017.
- **"Watch San Francisco's AnMarie Rodgers on How the City's Formula Business Policy Works,"** Dec. 2017: In this video of a 30-minute talk, AnMarie Rodgers, Senior Policy Advisor in the City of San Francisco Planning Department, breaks down the nuts-and-bolts of San Francisco's law.
- **"How San Francisco Strengthens Neighborhood Economies,"** *Building Local Power*, Oct. 2017: In this episode of ILSR's *Building Local Power* podcast, ILSR researchers Stacy Mitchell and Olivia LaVecchia talk with San Francisco Planning Department policy advisor AnMarie Rodgers about how the city's formula business policy works.
- **"ILSR's Testimony at New York City Hearing on Retail Diversity and Neighborhood Character,"** Olivia LaVecchia, *Institute for Local Self-Reliance*, October 2016: At a New York City Council hearing, ILSR submitted testimony examining the importance of locally owned businesses to the City, the crisis affecting them, and examples of effective and proven policy strategies to level the playing field for these businesses.
- **"Preserving Local, Independent Retail: Recommendations for Formula Retail Zoning in the East Village"** [PDF], *East Village Community Coalition*, May 2015: This report calls for new zoning to limit chains in this New York City neighborhood.
- ***San Francisco Formula Retail Economic Analysis***, June 2014: This document, which was prepared for the San Francisco Planning Department, reviews the impact of the ordinance after 10 years, on the eve of changes that the city passed to expand and strengthen it.



- **"How San Francisco is Dealing with Chains,"** Stacy Mitchell, *Institute for Local Self-Reliance*, Aug. 30, 2012.
- **"Legal Review from the Massachusetts Office of the Attorney General"** [PDF], April 2010: This letter is a legal determination that approves a formula business ordinance adopted in the town of Chatham. The attorney general finds that the ordinance does not violate the state's constitution or its laws. Here's **another one** [PDF] from 2011 regarding a formula business ordinance in Wellfleet.
- **"A Guide to Regulating Big-Box Stores, Franchise Architecture, and Formula Businesses"** [PDF], Daniel A Spitzer and Jill L. Yonkers, *New York Zoning Law and Practice Report*, January 2007: This guide is a valuable resource on the legal and regulatory aspects of formula business policies. It covers regulators' statutory authority, and also looks at the history of legal challenges to these policies. While the guide focuses on New York and New England-area law, it is also generally applicable in other regions of the U.S. The guide concludes, "If properly investigated, supported, and enacted, local regulations can deal with many of the potential negative impacts of [formula] businesses while preserving the benefits."
- **"Protecting Locally Owned Retail: Planning Tools for Curbing Chains and Nurturing Homegrown Businesses,"** Stacy Mitchell, *Main Street News*, February 2004.
- **Our archive of additional articles on formula business restrictions.**
- **"Saving Banff,"** *Calgary Herald*, June 27, 2003.
- **"Tackling the Problem of Commercial Gentrification,"** *Institute for Local Self-Reliance*, Nov. 1, 2002.
- **"The Impact of Chain Stores on Community,"** Stacy Mitchell, April 2000: A speech by ILSR's Stacy Mitchell delivered at the annual conference of the American Planning Association.

## Rules

### Formula Business Restriction -- Mendocino County, CA

Mendocino County, Calif., passed a formula business ordinance in November 2016, following community outcry over a proposed Dollar General. The outcry led to an interim moratorium on new permits for formula businesses while the county studied the issue, and ultimately, a formula business ordinance. As an ordinance at the county level, it's particularly effective, as it covers unincorporated areas that are outside the boundaries of city and municipal zoning.... [Read More](#)

### Formula Business Restriction -- Jersey City, NJ

In May 2015, the City Council of Jersey City voted to restrict formula businesses in the downtown area by limiting where they can locate to a maximum of 30 percent of ground floor commercial area on any single lot. The restriction applies to retailers, restaurants, bars, and banks, though there is an exception for grocery stores. Jersey City is the second most-populous city in the state of New Jersey, with more than 260,000 residents. The City Council voted to uphold the restrictions in June 2017.... [Read More](#)

### Formula Business Restriction -- San Francisco, CA

### Formula Business Restriction -- McCall, ID

Throughout most of the city, including all of San Francisco's Neighborhood Commercial Districts, formula retail stores and restaurants are considered conditional uses. This means they must be approved by the Planning Commission on a case-by-case basis. In evaluating whether to grant a permit for a formula business, the Planning Commission considers several criteria, including the existing concentration of formula businesses within the neighborhood, whether similar goods or services are already available, and the balance of neighborhood-serving versus citywide- or regional-serving businesses. In addition, formula retail and restaurant uses are prohibited outright in several neighborhoods. ... [Read More](#)

### **Formula Business Restriction – York, ME**

At a town meeting in May 2004, residents of York, Maine, voted to amend the town's zoning ordinance to prohibit formula restaurants. ... [Read More](#)

### **Formula Business Restriction – Sausalito, CA**

Sausalito treats both formula restaurants and retail stores as "conditional uses" that require a special permit to open or expand. ... [Read More](#)

### **Formula Business Restriction – San Juan Bautista, CA**

San Juan Bautista bars all formula retail stores and restaurants, and all stores over 5,000 square feet.... [Read More](#)

### **Formula Business Restriction – Port Jefferson, NY**

Port Jefferson prohibits formula fast food restaurants from locating in the village's historic commercial and waterfront districts. ... [Read More](#)

In 2006, McCall, Idaho, enacted an ordinance that limits formula restaurants to only 10% of the total number of restaurants and limits formula retail businesses to no more than 10% of the total number of "like businesses" in town. ... [Read More](#)

### **Formula Business Restriction – Solvang, CA**

One of the first communities to enact a formula business restriction, the town of Solvang prohibits formula restaurants from locating in its village center. ... [Read More](#)

### **Formula Business Restriction – Sanibel, FL**

This island community enacted an ordinance banning formula restaurants in 1996.... [Read More](#)

### **Formula Business Restriction – Port Townsend, WA**

Port Townsend limits formula retail stores and restaurants to a single commercial zone along the main road leading into the town and bars them from all other areas of town, including the downtown. Within that zone, formula businesses are not allowed to exceed 3,000 square feet nor occupy more than 50 linear feet of street frontage. Formula restaurants are subject to additional scrutiny.... [Read More](#)

### **Formula Business Restriction – Pacific Grove, CA**

The city's code prohibits formula fast-food restaurants. ... [Read More](#)

### **Formula Business Restriction – Ogunquit, ME**

In November 2005, voters by a margin of 71 to 29 percent approved a measure that bans formula restaurants.

... [Read More](#)

### **Formula Business Restriction – Fredericksburg, TX**

Fredericksburg, Texas, requires that standardized (formula) businesses apply for a conditional use permit to enter the city's historic downtown district. ...

[Read More](#)

### **Formula Business Restrictions – Coronado, CA**

This city of 24,000 in southern California allows no more than 10 formula restaurants and requires formula retail stores to pass a review and obtain a special permit to open. ...

[Read More](#)

### **Formula Business Restriction – Carmel-by-the-Sea, CA**

This small city in the mid-1980s became the first town in the country to enact a formula restaurant ban, which prohibits fast food, drive-in and formula food establishments. ...

[Read More](#)

### **Formula Business Restrictions – Bristol, RI**

Bristol bars formula businesses larger than 2,500 square feet or that take up more than 65 feet of street frontage from locating in the downtown. Smaller formula businesses may apply for a special use permit.

... [Read More](#)

### **Formula Business Restriction – Arcata, CA**

### **Formula Business Restriction – Nantucket, MA**

A measure barring formula businesses from downtown Nantucket was adopted by a town meeting vote in April 2006....

[Read More](#)

### **Formula Business Restriction – Fairfield, CT**

In 2007, the city of Fairfield adopted a measure that stipulates that formula businesses may not locate in neighborhood business districts unless they undergo review and obtain a special permit. ...

[Read More](#)

### **Formula Business Restriction – Chesapeake City, MD**

The town prohibits formula businesses in the village center, the waterfront district, and all other areas of town except the "general commercial" zone. In this area, formula businesses are allowed provided they meet design standards....

[Read More](#)

### **Formula Business Restriction – Calistoga, CA**

In 1996, the town of Calistoga, California enacted an ordinance that prohibits formula restaurants and visitor accommodations, and requires that other types formula businesses undergo review and apply for a special use permit to open....

[Read More](#)

### **Formula Business Restriction – Bainbridge Island, WA**

In 1989, the city council adopted an ordinance prohibiting formula take-out food restaurants....

[Read More](#)

### **Formula Business Restriction – Benicia, CA**

In June 2002, the city of Arcata, California, enacted an ordinance that limits the number of formula restaurants in the city to no more than nine at any one time. ... [Read More](#)

Benicia, a town of 27,000 people located about 40 miles northeast of San Francisco, has adopted two ordinances, which stipulate that retail stores larger than 20,000 square feet and formula restaurants will not be approved unless they meet certain criteria.... [Read More](#)

▀ formula business restriction, local, local policy, planning & zoning

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Stacy Mitchell is co-director of the Institute for Local Self-Reliance, and directs its Independent Business Initiative, which partners with a wide range of allies to implement policies that counter concentrated power and strengthen local economies.

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# Dollar Store Impacts

HR561 ✖ |

Dollar General, Dollar Tree, and Family Dollar have big expansion plans. But are these chains good for communities? **Get the facts and learn what you can do.**

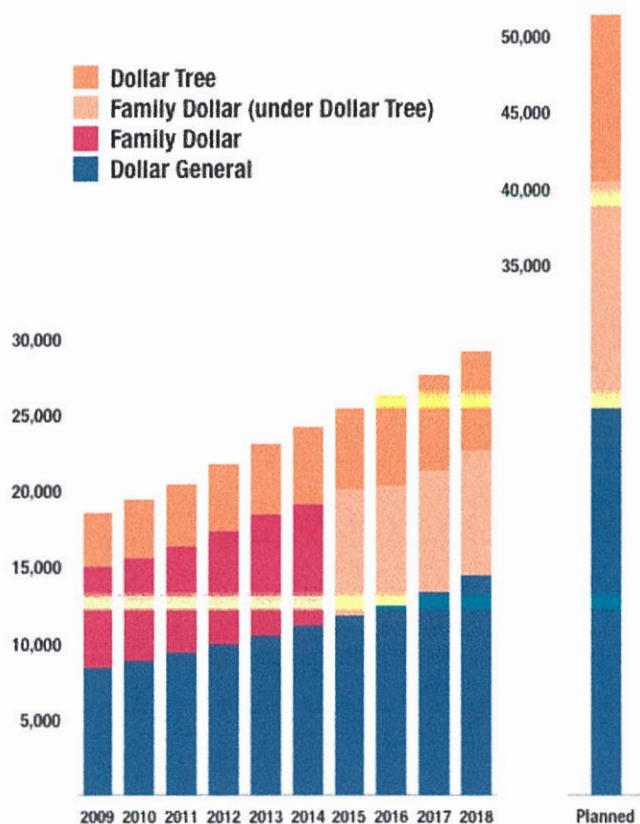
Dollar stores are multiplying rapidly. Since 2011, two dominant chains – Dollar General and Dollar Tree, which acquired Family Dollar in 2015 – have grown from about 20,000 locations to nearly 30,000 total. Both plan to expand even further. In recent annual reports, the two chains indicate they have identified locations for a combined total of 20,000 additional outlets.

While dollar stores sometimes fill a need in cash-strapped communities, growing evidence suggests these stores are not merely a byproduct of economic distress. They're a cause of it. In small towns and urban neighborhoods alike, dollar stores are triggering the closure of grocery stores, eliminating jobs, and further eroding the prospects of the vulnerable communities they target.

The dollar chains have thrived in part by taking advantage of lax land use policies. New dollar stores, which are generally smaller than 10,000 square feet, are often subject to little or no planning review or other permitting hurdles. But communities do have the authority to check their spread – and some are starting to use it.

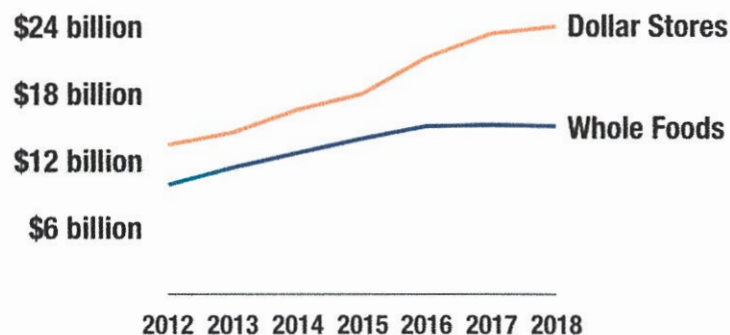
## Rapid Expansion of Dollar Stores

"Planned" stores are based on "identified locations" as reported by the major dollar store chains.



Source: Dollar General, Dollar Tree, and Family Dollar Annual Reports

**Although most dollar stores sell no fresh food and only a limited selection of packaged foods, the two major dollar chains are now feeding more Americans than Whole Foods is.**



Source: Chain Store Guide | Note: "Dollar Stores" combines data from Dollar General and Dollar Tree, which owns Family Dollar

## Eliminating Grocery Stores

Dollar stores are taking a toll on grocery stores and, in many cases, reducing people's access to fresh food. In small towns, which are often served by a single locally owned supermarket, a dollar store's arrival typically cuts sales at the supermarket by about 30 percent.<sup>1</sup> In most cases, that's enough to put a local grocer out of business, leaving the community's commercial district without an anchor and negatively impacting other businesses.

In cities, dollar stores concentrate in areas that already have few or no grocery stores.<sup>2</sup> Our research suggests that they often target African American neighborhoods.<sup>3</sup> Their strategy of saturating these neighborhoods with multiple outlets can make it nearly impossible for new grocers and other businesses to take root and grow.

Dollar stores are a poor substitute for grocery stores. A typical dollar store carries no fresh produce, only a limited selection of processed foods. And they aren't necessarily less expensive. Packaged in single-serving quantities, their food offerings have lower price points, but are often more expensive per ounce.<sup>4</sup>

*"What the dollar stores are betting on in a large way is that we are going to have a permanent underclass in America."<sup>5</sup>*

– Garrick Brown, retail analyst, Cushman & Wakefield

For more information, see ILSR's research on dollar stores on our website, at [www.ilsr.org/dollar-stores](http://www.ilsr.org/dollar-stores)



X4



**FRANCHISING**  
Building local businesses,  
one opportunity at a time.

February 7, 2019

New Hampshire Legislature  
House Commerce & Consumer Affairs Committee  
107 North Main St  
Concord, NH 03303

RE: Oppose HB 561

Chairman Butler, Vice Chairman Williams & Members of the Committee:

**On behalf of the more than 300 industries using the franchise business model to fuel entrepreneurship, I am writing to express our opposition and concerns to HB 561, regarding zoning laws which discriminate against franchise businesses.** In order to promote retail diversity, it is vital to pursue an environment which welcomes all types of retail establishments, thereby promoting a healthy landscape for both entrepreneurs and the consuming public. Moving forward with a discriminatory zoning law would arbitrarily and unfairly restrict the ability of current and future local small business franchise owners from offering their goods and services. Additionally, any discriminatory ordinance could have potential legal ramifications, up to and including litigation. Often times franchisees enter in franchise agreements requiring multiple units to be opened within a given period of time, which could clearly be impacted by a change in zoning requirements.

Celebrating close to 60 years of excellence, education and advocacy, the International Franchise Association is the world's oldest and largest organization representing franchising worldwide. IFA works through its government relations and public policy, media relations and educational programs to protect, enhance and promote franchising and the more than 733,000 franchise establishments that support nearly 7.6 million direct jobs, \$674 billion of economic output for the U.S. economy and 3 percent of the Gross Domestic Product (GDP), **including over 3,000 establishments in New Hampshire generating more than \$2.6 billion in economic output each year and supporting over 26,000 New Hampshire jobs.**

Before undertaking any sort of legislation, it is important to fully understand the how franchising works and who franchisees are. Franchise businesses are **locally** owned small businesses with a national name. The brands do not own the stores and franchisees are small business owners, not 'mega corporations'. Moving forward with a ban or restriction does nothing but discriminate against local small business entrepreneurs in New Hampshire, while simultaneously restricting consumer choices. If retail diversity, consumer choice and consumer access are the paramount concern, enacting franchise restrictive zoning rules are the exact opposite direction to go.

Like any other small business, a franchisee's success depends on their own capital, hard work and long hours. Like any other enterprise in New Hampshire, a franchisee operating there pays taxes, is involved in supporting community activities and creates economic opportunities for employees and suppliers

who directly benefit from the existence of the enterprise, all while providing the consuming public with goods and services.

**Government should not impose its will on the consumers of New Hampshire but should instead allow the community to decide through the marketplace if certain businesses are acceptable to them, as the free enterprise system is supposed to work. Indeed, franchise businesses successfully coexist in many historic or traditional business districts alongside locally founded establishments.**

I urge you to carefully consider any proposal including a moratorium or restriction on franchise businesses. Such drastic steps not only harm your community by weakening its economy but are contrary to the most basic tenets of American entrepreneurship and fairness.

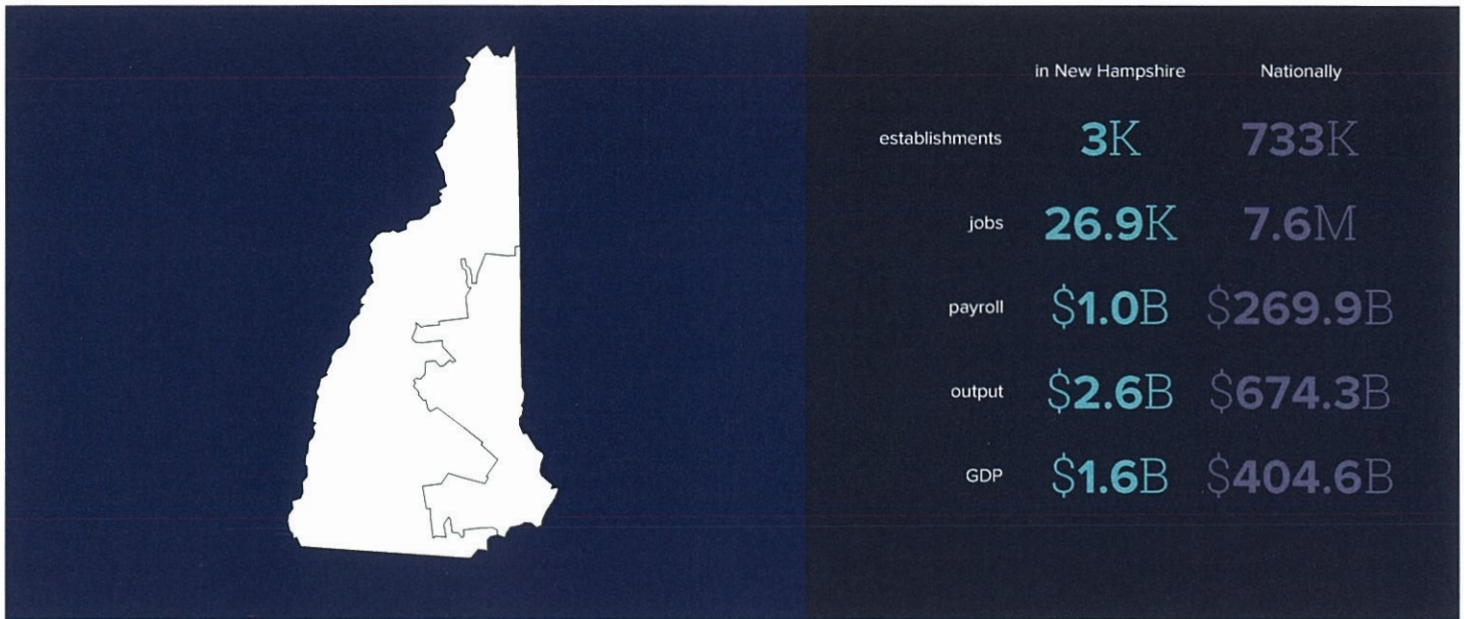
Thank you for your consideration.

Best Regards,

A handwritten signature in black ink, appearing to read "M. Jeff Hanscom". The signature is written in a cursive, flowing style.

Jeff Hanscom  
Vice President, State Government Relations  
International Franchise Association

# Economic Impact of Franchising in New Hampshire



## Franchise Fast Facts



### The Franchise Business Model

- Brings together brands, local business owners, employees, and the local community.
- Is a uniquely accessible business model which allows you to start at the entry level and have the opportunity to own your own business.
- Has created tens of thousands of small business owners and millions of opportunities for workers while being the largest vocational training industry in America.



### Franchise Business: Good for America and Good for Local Communities

- The International Franchise Association is the world's oldest and largest organization representing franchising worldwide. Celebrating 50 years of excellence, education and advocacy, IFA works to protect franchisee interests, and promote franchising through its government relations and public policy, media relations, and educational programs.



# Bill as Introduced

HB 561 - AS INTRODUCED

2019 SESSION

19-0465  
11/06

HOUSE BILL

**561**

AN ACT

relative to zoning ordinances for formula businesses.

SPONSORS:

Rep. Vann, Hills. 24

COMMITTEE:

Commerce and Consumer Affairs

---

ANALYSIS

This bill grants authority to local legislative bodies to regulate formula businesses.

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Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT relative to zoning ordinances for formula businesses.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Section; Restriction of Formula Businesses. Amend RSA 674 by inserting after section  
2 21-a the following new section:

3 674:21-b Restriction of Formula Businesses.

4 I. Any local legislative body may, pursuant to RSA 674:16 and in accordance with this  
5 subdivision, bar formula businesses from any municipality or district therein.

6 II. For purposes of this section, "formula business" means a type of retail sales  
7 establishment, restaurant, tavern, bar, or take-out food establishment which, along with 14 or more  
8 other establishments, maintains 2 or more of the following features:

9 (a) A standardized menu or array of merchandise, with 50 percent or more of in-stock  
10 merchandise from a single distributor bearing uniform markings.

11 (b) A trademark or service mark that identifies and distinguishes the source of the  
12 goods from one party from those of others, on products or as part of store design.

13 (c) A standardized interior decor including, but not limited to, style of furniture, wall-  
14 coverings, or permanent fixtures.

15 (d) A standardized color scheme used throughout the interior or exterior of the  
16 establishment.

17 (e) A standardized uniform, including but not limited to, aprons, pants, shirts, smocks  
18 or dresses, hats, or pins other than name tags.

19 2 Effective Date. This act shall take effect 60 days after its passage.