

# 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 Restrictions](#) for other approaches cities are taking to restrict certain chain retailers, such as limiting the density of dollar stores, while supporting more balanced, local development.

## 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.

- Should the measure prohibit formula businesses altogether, cap their number, or make them a

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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

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

### Formula Business Restriction -- McCall, ID

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](#)

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](#)

### 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 -- 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 -- 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 -- 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

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](#)

### 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

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](#)

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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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# The Dollar Store Backlash Has Begun

The U.S. has added 10,000 of these budget retail outlets since 2001. But some towns and cities are trying to push back.

**CityLab** | Tanvi Misra



*A Dollar General store in Chicago. Photo by Jim Young/Reuters.*

It has become an increasingly common story: A dollar store opens up in an economically depressed area with scarce healthy and affordable food options, sometimes with the help of local tax incentives. It advertises hard-

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### NO DOLLAR STORE IN EMPIRE

Leelanau County as a whole does not have any formula stores.

What makes Empire more unique? Empire is the headquarters of Sleeping Bear Dunes National Lakeshore with its facility a major visitor attraction.

The introduction of Formula type stores would be a scar on the uniqueness of this community.

What would visitors think when they arrive to visit the park headquarters and only a block or so away is a 5000 sq. ft. chain store such as a Dollar Store?

Sure, Empire needs a grocery store but a local entrepreneur could do that in an esthetically pleasing way.

A Dollar type store located in this beautiful oasis would be a huge mistake for the community and the small businesses located here.

For more information on this subject check out:  
<http://ilsr.org/rule/formula-business-restrictions/>.

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Empire