

VOTE YES! ON ARTICLE 29

Formula Business Bylaw to Protect Concord Center's Unique Character

Support the Planning Board's and Comprehensive Long Range Plan's Recommendations

BACKGROUND:

- Over 800 Concord residents, neighbors, visitors, and supporters have signed petitions in the past year calling for a Formula Business Bylaw for Concord Center.
- Article 29 is rooted in Town documents from as far back as the 2007 Village Centers Study and as recently as the 2018 Comprehensive Long Range Plan, which have specifically identified a Formula Business Bylaw as a Recommended Action to protect the character of Concord's village centers.
- Article 29 is unanimously recommended by the Planning Board to this Town Meeting as a direct outgrowth of the 2018 Comprehensive Long Range Plan, and in response to the public's stated desire.
- The Select Board's position of "no action," is out of step with Town documents and past Select Boards' actions, who not only recommended "affirmative action" for this bylaw, but have gone further. The 2010 Select Board took the initiative of charging the Planning Board to take up the Formula Business Bylaw again the following year after the bylaw's narrow defeat at 2010 Town Meeting. Out of this action, the West Concord Center Formula Business Bylaw was established.
- Article 29 would extend West Concord Center's existing Formula Business Bylaw (FBB) to Concord Center.
- Article 29 is a cap, not a ban. It welcomes and allows both existing and new formula businesses to operate in our town centers within clear limits: 12 in Concord Center (currently there are 10); 10 in West Concord Center (currently there are 7). With it, we can have our formula business coffee and protect the unique character of our village center at the same time.
- Many proactive, far-sighted towns nationwide have successfully enacted Formula Business Bylaws to protect their towns' distinctive character and to ensure the economic vibrancy and diversity that unique shops and services bring to a center, including towns in CA, CT, FL, ID, MD, ME, NJ, NY, RI, TX, WA. Towns in Massachusetts include Barnstable, Chatham, Dennis, Eastham, Nantucket, and Provincetown.

Currently, the Town has no direct means to manage the number of formula businesses in Concord Center.

COMMON MISCONCEPTIONS:

- **Doesn't the Historic Districts Commission already protect Concord Center from formula businesses?**
No. The Historic Districts Commission's (HDC) charge is to ensure the appropriateness of exterior features visible from the public way. Under this set of criteria, Main and Walden Streets could eventually be lined with appropriate-looking formula businesses.
- **Aren't small store footprints sufficient deterrents?**
No. While small store space may be an *indirect* deterrent in some cases, there is a growing trend among formula businesses to locate in discreet, smaller spaces. Article 29 offers a *direct* means by which to manage the numbers of formula businesses in Concord Center and prevent their proliferation.
- **Can't the Planning Board deny a formula business now from operating in Concord Center?**
No. The Planning Board's Special Permit process is limited to criteria such as parking, traffic, trash, deliveries, etc. Article 29 would provide an important new planning tool that would allow the Planning Board to regulate the number of formula businesses in Concord Center, and where they are located, in the broader context of how many formula businesses already exist, instead of reviewing applications on a case-by-case basis.

MORE QUESTIONS ABOUT ARTICLE 29

Why fix what's not broken?

As with all preservation measures, Article 29 applies a proactive approach to a valuable resource shared by all -- Concord Center's beloved unique character -- and preserves it *before* it needs fixing. Article 29 would codify and safeguard the existing healthy proportion of formula and independent businesses in Concord Center, so that its current vibrant diversity can endure into the future.

Won't the bylaw cause more vacancies by keeping formula businesses out during hard times?

Of note, most of the recent vacancies in Concord Center have been associated with the nearly two-year renovation of the old Concord Toy Shop building. It is high rents that typically cause vacancies, not FBBs. Since the passage of its FBB, West Concord Center is burgeoning with new businesses. Far from a chilling effect, the bylaw has provided a thriving business environment. With only 7 of 10 formula business openings filled in West Concord Center, the bylaw cannot be accused of keeping formula businesses out. This bylaw is especially needed during hard times when the pressure to fill vacancies with any business is at its greatest.

Wouldn't efforts to expand tourism be a better solution?

While expanding tourism will likely benefit the business community, greater numbers of tourists and visitors will not prevent the incremental spread of formula businesses in Concord Center. If pursued, efforts to enhance tourism should work in parallel with an FBB, not as a substitute for it. Many towns on the Cape, as well as elsewhere in the country, have enacted Formula Business Bylaws to preserve their town's unique appeal as a destination point *in order to* continue attracting tourists.

What is the legality of Formula Business Bylaws?

Legal commentators and courts generally agree that Formula Business Bylaws (FBB) are constitutionally permissible if they are related to legitimate planning concerns, such as preserving uniqueness. Wellfleet's FBB was overturned in 2015 in MA land court, as it should have been. It was poorly written and improperly applied. A recent written legal opinion comparing the Concord and Wellfleet FBBs, submitted to the Planning Board, has identified key critical differences between the two, and concludes that Concord's existing and proposed FBBs are on solid legal ground in light of the Wellfleet court decision. Formula Business Bylaws have been approved, and re-approved, by the Attorney General in MA since the Wellfleet case.

EVERYONE BENEFITS

Article 29 benefits everyone – residents, visitors, shoppers, the diverse business community, and commercial property owners alike -- by safeguarding Concord Center's treasured, irreplaceable character and sense of place. The 2005 Comprehensive Long Range Plan states:

“Town-wide property values and commercial enterprise benefit from the remarkable character of the town... Concord is challenged on a regular basis by potentially detrimental changes and growth demands. The town's attractiveness and unique character can be easily and inadvertently lost.”

Article 29 is a response to this appeal. If passed, it will take its place with Concord's long tradition for proactive, far-sighted planning to preserve our Town's commonly-held assets.

For more information, visit www.ProtectConcordCenter.org