

Zoning Moratoria Under Indiana and Federal Law



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What Is a Zoning Moratorium?

A temporary freeze on development approvals while a jurisdiction studies or drafts permanent land-use regulations or addresses a local emergency



Interim, Not Permanent

Meant to hold the status quo for a defined period while a comprehensive plan and/or zoning ordinance is developed.



Tied to Planning Power

In Indiana, zoning authority — including interim measures — flows from the Planning and Zoning Statute, I.C. § 36-7-4, et seq.



Two Legal Fronts

Must satisfy (1) Indiana statutory authority and (2) Indiana and Federal constitutional limits, especially the Takings Clause, Due Process and Equal Protection.



Indiana's Statutory Framework

IC 36-7-4 et seq.

Counties and municipalities have no inherent zoning power. Every zoning act — including a moratorium — must trace to an express or necessarily implied statutory grant.

≡ **Exclusive authority to zone**

IC 36-7-4-601(a) vests the legislative body with exclusive authority to adopt a zoning ordinance. 601(a)(1): air, light, convenience of access, safety from fire/flood. 601(a)(2): lessening congestion. 602(a)(3): public health, safety, comfort, morals, welfare.

≡ **Comprehensive plan first**

The Comprehensive Plan process (notice, hearing, Plan Commission certification, adoption by legislative body) under the 500 Series must precede a valid zoning ordinance.

≡ **Interim ordinances are narrowly bounded**

Interim zoning measures may only bridge the gap while a comprehensive plan or zoning ordinance is actually being developed or a local crisis addressed — not indefinitely.

≡ **Limited local power**

Local legislative bodies possess only such powers as have been granted expressly by the Zoning Enabling Statute.



K.G. Horton & Sons, Inc. v. Board of Zoning Appeals of Madison County

135 N.E.2d 243 (Ind. 1956)

FACTS

Madison County operated under a 1946 “interim” zoning ordinance that, by its own terms, expired after one year or when a final comprehensive ordinance took effect. The County Commissioners simply readopted the interim ordinance year after year — for nearly a decade — without ever completing a comprehensive plan.

HOLDING

Void for lack of statutory power.

A board of county commissioners has no express or implied statutory power to renew a one-year interim ordinance indefinitely. An interim ordinance cannot be converted into a permanent one by repeated readoption — it must give way to a real comprehensive plan or zoning ordinance.



Why it matters: Horton is Indiana's foundational rule that county boards possess only delegated zoning power — later moratorium cases build directly on it.



Pro-Eco, Inc. v. Board of Commissioners of Jay County, Indiana

956 F.2d 635 (7th Cir. 1992) — “Pro-Eco I”

FACTS

After learning Pro-Eco planned to build a sanitary landfill, Jay County — which had no comprehensive plan or zoning ordinance at all — enacted an ordinance barring any new landfill for up to three years, until a comprehensive plan could be adopted.

HOLDING

A moratorium IS a zoning ordinance.

The Seventh Circuit held Jay County's landfill ban functioned as zoning — it stabilized land uses and preserved the status quo pending future planning. Because Indiana law requires a comprehensive plan before any zoning ordinance, and Jay County had none, the moratorium was void.



Key takeaway: calling a measure an “emergency” or “interim” ordinance doesn't exempt it — substance governs. If it regulates land use, it must follow the 600 Series to be enforceable.



Pro-Eco, Inc. v. Board of Commissioners of Jay County, Indiana

57 F.3d 505 (7th Cir. 1995) — “Pro-Eco II” (damages phase)

FACTS

Having won invalidation of the moratorium, Pro-Eco came back seeking money damages under 42 U.S.C. § 1983 — arguing the void ordinance was also an unconstitutional taking and a due process / equal protection violation.

HOLDING

State-law invalidity ≠ constitutional violation.

Violating Indiana's zoning procedure does not by itself amount to a substantive due process, equal protection, or takings violation. Rational-basis review applied: protecting public health/safety from landfills was a legitimate goal, and the moratorium was a rational means — claims failed.



Practical effect: the remedy for an ultra vires moratorium in Indiana is typically invalidation — not automatic money damages against the local government.



Rogers Grp., Inc. v. Tippecanoe County

52 N.E.3d 848 (Ind. Ct. App. 2016)

FACTS

Tippecanoe County adopted an ordinance prohibiting new quarries within two miles of residential areas. The ordinance confined a certain class of use (quarries) to designated areas. Commissioners did not follow the 600 Series in enacting the prohibition ordinance.

HOLDING

Void for failing to follow the 600 Series.

This was “quintessential zoning,” citing *City of Carmel v. Martin Marietta Materials, Inc.*, 883 N.E.2d 781 (Ind. 2008) (a zoning ordinance “dictat[es] what type of land use is permitted and where”). Because the Commissioners did not comply with the 600 Series, the prohibition ordinance was invalid and unenforceable.



Why it matters: Moratoria ordinances are zoning ordinances and must be enacted in accordance with the 600 Series.



Indiana's One-Year Cap On Moratoria

IC 36-7-4-1109.5

Effective July 1, 2025, the General Assembly stepped in to stop what legislators called “abuse” of moratoria — capping, by statute, how long one specific category of interim ordinance may last.



Scope: electricity-generation projects

Applies to any local prohibition — by ordinance or otherwise — on the siting, construction, installation, permitting, or deployment of a project used to generate electricity (e.g., solar, wind, natural gas, battery storage, nuclear).



Hard one-year ceiling

A local authority may not prohibit such projects for more than one year, no matter what rationale the county or municipality offers for the pause.



No renewals after June 30, 2025

Once in effect, the prohibition cannot be extended — closing the loophole Horton condemned: successive “interim” readoptions used to make a pause permanent in substance.



A targeted, not general, fix

Sponsors said some jurisdictions used repeated “temporary” moratoria to permanently block disfavored energy projects without ever adopting a plan. Outside this category, Indiana still has no general statutory duration cap — Horton, Pro-Eco, and Rogers Grp. remain the operative limits, alongside Tahoe-Sierra's one-year “special skepticism” benchmark.

Constitutional Challenges to a Moratorium Ordinance

Once a moratorium clears the statutory process hurdle, it must also pass state and federal constitutional muster

	Indiana Constitution	Federal Constitution
Takings	Article 1, § 21: interpreted identically to the 5th Amendment	5th Amendment: just compensation for taking private property — physical invasion, regulatory taking, or eminent domain/inverse condemnation
Due Process	Article 1, § 12: (Due Course of Law): analysis mirrors the federal standard	14th Amendment: Euclid v. Ambler substantive due process test — must bear a substantial relation to public health, safety, morals, or general welfare, by means reasonably necessary and not unduly oppressive
Equal Protection	Article 1, § 23: (Privileges and Immunities): distinct 2-part test — disparate treatment tied to inherent distinguishing characteristics; uniform application (<i>Dvorak v. Bloomington</i> , 702 N.E.2d 1121 (Ind. 1998))	14th Amendment: rational basis test; cannot be applied in an irrationally discriminatory manner
Freedom of Speech	Article I, § 9: Indiana “more jealously protects” speech than the U.S. Constitution (<i>Gul v. City of Bloomington</i> , 22 N.E.3d 853 (Ind. 2014))	1st Amendment: prior restraint concerns (signs and sexually oriented businesses)

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Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency

535 U.S. 302 (2002) — U.S. Supreme Court

The Tahoe Regional Planning Agency imposed back-to-back moratoria — 32 months combined — on development around Lake Tahoe while it crafted a comprehensive land-use plan. Affected landowners argued the moratoria were a per se taking under the Fifth Amendment because they temporarily denied all economic use of the land.

Holding:

A temporary development moratorium is NOT a categorical (per se) taking, even if it denies all economic use for its duration. Courts instead apply the fact-specific *Penn Central* balancing test — weighing economic impact, interference with investment-backed expectations, and the character of the government action.

Why Tahoe-Sierra Rejected a *Per Se* Rule for Moratoria

Four reasons the Court gave planners breathing room



“Parcel as a whole”

You cannot conceptually sever the moratorium period from the rest of the fee interest and call that sliver a total taking — the property is viewed in its entirety, geographic and temporal.



Value tends to recover

Because a temporary restriction is lifted, land typically regains value; a permanent deprivation (a *Lucas* taking) is a different animal than a temporary one.



Planning needs breathing room

Requiring compensation for every moratorium would pressure officials to rush or skip planning — fostering inefficient, ill-conceived development.



Duration still matters

The Court left the door open: a moratorium “lasting more than one year should be viewed with special skepticism” under Penn Central's *ad hoc* analysis.

Can a Moratorium Ever Be Permanent?

A “Permanent moratorium” may change the analysis from *Penn Central* and *Tahoe-Sierra* a per se taking analysis under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)



It stops being a moratorium

Once a freeze has no real end date and no genuine planning effort underway, courts may treat it as a disguised ban or downzoning — reviewed under ordinary takings and due-process doctrine



Lucas rule:

A regulatory, permanent denial of all beneficial use of land is a categorical (*per se*) taking requiring compensation — no *Penn Central* case-by-case balancing.



Monks v. City of Rancho Palos Verdes, 167 Cal. App. 4th 263 (2008)

A landslide-area building freeze left in place for roughly 30 years was held an unconstitutional taking — a restriction sold to the public as temporary but never lifted is judged on what it actually did to the property, not its label.



Nectow v. City of Cambridge, 277 U.S. 183 (1928)

Apart from takings law, a permanent land-use restriction that bears no substantial relation to public health, safety, morals, or general welfare as applied to the specific parcel may violate due process.

Practical read: *Tahoe-Sierra*'s tolerance for moratoria rests entirely on their temporary, plan-driven nature. Remove that — no deadline, no active planning, indefinite renewal — and courts review it as a permanent taking/due-process problem; in Indiana it likely also fails Horton's rule against converting “interim” measures into permanent ones without statutory authority.

Can a Moratorium Ever Be Permanent?

Even if a permanent moratorium does not invoke *Lucas's per se* takings rule, the moratorium could still be a takings under *the Penn Central* test. The permanent moratorium may also run afoul of substantive due process or equal protection



Economic impact



***Interference with
Investment-Backed
Expectations***



***Character of
Governmental
Action***



***Sherman v. Town of
Chester, 752 F.3d
554 (2nd Cir. 2014)***

Cumulative actions by town,
successive demands and
shifting regulations
effectively prevented any
economic use of property

Practical read: *Tahoe-Sierra's* tolerance for moratoria rests entirely on their temporary, plan-driven nature. Remove that and courts may find that the government regulation went “too far” under *Penn Central* or a violation of substantive due process or equal protection

Two Layers of Legal Risk for an Indiana Moratorium

A moratorium must clear both the state statutory bar and the federal constitutional bar

	Indiana Procedural Law	State & Federal Constitution
Governing Law	<i>Horton</i> (1956); <i>Pro-Eco I</i> (1992); <i>Rogers Grp.</i> (2016)	Takings, Substantive Due Process, Equal Protection, Free Speech Clauses
Core Question	Did the local body have statutory power to enact this measure?	Does it amount to a compensable taking? Rational basis tied to public welfare? Irrationally discriminatory? Does it affect speech?
Standard Applied	Express or necessarily-implied statutory authority; comprehensive plan prerequisite	<i>Penn Central</i> ad hoc balancing; Rational Basis Test; Prior Restraint analysis
Typical Remedy	Ordinance declared void and unenforceable	Ordinance invalid; damages only if a genuine constitutional violation

Examples Where Moratoria Have Been Upheld and Questioned

	Moratorium Upheld	Moratorium Questioned
Formulate New Plan or Ordinance	<i>Tahoe-Sierra</i>	<i>Bill Salter Adver., Inc. v. City of Brewton</i> , (sign moratorium reasonable, but 22 months was not)
Utilities	<i>Swanson v. Marin Mun. Water Dist.</i> , (sewer); <i>P-W Invest. v. Westminster</i> , (sewer and water); <i>Sun Ridge Dev. v. Cheyenne</i> (drainage)	<i>Q.C. Construction Co. v. Gallo</i> (moratoria invalid — no evidence new sewer connections would worsen the sewer problem)
Effects of a New Use/Technology	<i>Lamar OCI North Corp. v. City of Walker</i> , (reasonable period to study new technology permitted)	<i>Cellular Tel. Co. v. Village of Tarrytown</i> , (no legally established emergency, crisis, or dire necessity to justify moratorium)



Preparing and Enacting a Defensible Moratorium in Indiana

- Trace the power expressly to IC 36-7-4-601 (public health, safety, general welfare) — never rely on Home Rule for what the zoning statute already governs.

- Set a genuine, bounded time limit and actually work toward a comprehensive plan or zoning ordinance during that window — don't just readopt the same interim ordinance; unreasonable delay can invalidate the moratorium.

- Treat any moratorium as a zoning ordinance in substance — give it the statutory process (notice, hearing, Plan Commission recommendation, legislative adoption under the 600 Series) — don't rely only on general police power.

- Document a legitimate public-health/safety/welfare/emergency rationale to survive rational-basis review on due process or equal protection grounds. Watch for irrational discrimination between similarly situated uses (e.g., short-term v. longer-term rentals).

- Keep duration reasonable — courts view moratoria exceeding about one year with “special skepticism” under *Tahoe-Sierra*, and a moratorium on electricity-generation projects (e.g. solar, wind) now has a hard one-year statutory cap with no renewal under IC 36-7-4-1109.5.



Questions and Discussion

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