

## COURT EXAMINES CONSTITUTIONALITY OF CITY ORDINANCE REQUIRING PRIVATE PROPERTY OWNER TO FIX SIDEWALK

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*Bonito Partners, LLC v. City of Flagstaff*

Ct. Appeals, Division One, February 21, 2012

Authored by the [JSH Appellate Team](#)

A City of Flagstaff ordinance requires a landowner to repair a public sidewalk adjacent to the landowner's property. If the landowner does not perform the repair, the City will perform the repair and bill the landowner. If the landowner refuses to pay, the ordinance allows the City to record a lien against the landowner's property.

Bonito is a landowner with an adjacent public sidewalk. The City recorded a lien against Bonito's land. Bonito then filed suit alleging the ordinance violates the federal and state takings clause, is an unlawful tax, and exceeds the scope of the City's authority. The trial court granted summary judgment in favor of the City, and Bonito appealed.

On the takings claim, the court of appeals first determined that the ordinance was a valid exercise of the City's police power under the Due Process clause of the Fourteenth Amendment. The ordinance did not constitute a "per se" taking however, and remanded the issue to determine if the ordinance was a taking pursuant to standards set forth in federal law.

The court also held that the ordinance did not constitute a "special tax" since the ordinance was not revenue generating; and was not an unconstitutional "special law" because (1) it was rationally related to the legitimate government objective of abating nuisances; (2) the ordinance applied uniformly to all owners of land with adjacent public sidewalks; and (3) the class of persons the ordinance applies to is elastic – the property owner is part of the class while owning such land and leaves the class when such land is relinquished. Nor did the ordinance exceed the City's statutory authority.