

## Court revives suit over Nazi salute in Santa Cruz

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**(12-15) 13:11 PST SANTA CRUZ** -- A federal appeals court revived a free-speech suit Wednesday by a homeless-rights advocate who was ejected from a Santa Cruz City Council meeting for giving a mock Nazi salute to the mayor.

Lower courts had dismissed Robert Norse's suit without a trial, ruling that the council removed him from the March 2002 meeting because he was disruptive and not because he was criticizing the mayor.

But the Ninth U.S. Circuit Court of Appeals in San Francisco said videos of the meeting raised a question about "whether Norse was impermissibly ejected because of his viewpoint rather than his alleged disruptiveness." A jury should answer that question, the court said.

The 11-0 ruling entitles Norse to a trial on his damage claims against the mayor, council members and the city.

Norse gave a silent, stiff-armed salute from the audience after Mayor Christopher Krohn cut off a speaker at the council meeting. The council ordered Norse to leave, and when he refused, he was arrested and held for 5 1/2 hours before being released without charges.

He was later evicted from a January 2004 council meeting for whispering to someone in the audience. Norse's suit also seeks damages for that incident.

U.S. District Judge Ronald Whyte dismissed the suit in 2007, saying the salute was inherently disruptive. A three-judge appeals court panel agreed, but was overruled by the larger panel Wednesday after the full court ordered a rehearing.

A city council can evict someone from a public meeting only "for actually disturbing or impeding the meeting," Judge Sidney Thomas said in the court's opinion. He said people have the right to engage in nondisruptive free expression throughout the meeting, and not only - as the city argued - during the designated public comment period.

Two panel members wanted to go further and rule that the council had violated Norse's rights. The videos show that "Norse's calm assertion of his constitutional rights was not the least bit disruptive," said Chief Judge Alex Kozinski, joined by Judge Stephen Reinhardt.

*The ruling can be viewed at [links.sfgate.com/ZKSS](http://links.sfgate.com/ZKSS).*

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