

# Kalfen Law Corporation

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8 September 2014

Mayor Lynne Robinson  
Members of the City Council of Santa Cruz  
809 Center Street, Room 10  
Santa Cruz, CA 95060

Re: Please Comply with California Law & Prior Court Order in *Norse v. Santa Cruz* & Cease and Desist from Interference with Recordation of Meetings by Reporter Robert Norse

Dear Mayor Robinson and Members of the Santa Cruz City Council:

This letter is an attempt to find resolution of the above short of further legal action. We do share a love for the Santa Cruz community. We likewise only wish to enhance our local community, not expend resources on needless litigation. Therefore, this letter is also sent in hope that the Mayor and Council will adjust future conduct to comply with California Law as set forth below. Otherwise, we will have no choice but to take further legal action.

It is my understanding that Mr. Robert Norse is a reporter for Free Radio Santa Cruz, a writer and commentator on local matters, and frequently attends Santa Cruz City Council meetings. He has regularly recorded such meetings with a hand-held device that he places in near the speaker's podium, but not in such a position as to interfere with the speakers or disturb the orderly flow of Council business.

I understand that this is one of the few if not the only spots in the room where an audible recording can be made with such a device. I understand he has done this with some regularity for the last several decades in order to report on issues around homelessness, police misconduct, and other matters of particular concern to the poor and working class community.

I understand that you have recently enforced a City Council rule which states ““No audio/visual recording devices may be left unattended at the speaker’s lectern or elsewhere in the Council Chambers.” ” I further understand that this rule has never been applied to him or other media until April 1, 2014 when his machine was forcibly removed by an armed officer and he himself arrested when he refused to leave the room after replacing it.

I understand that though this caused no disruption to Council Business, at the April 1st

meeting the Mayor chose to stop the meeting herself, threaten Mr. Norse with arrest, and then have him arrested when he asserted his Brown Act right as citizen and media person to make an audio recording of the meeting as he had regularly done before.

I understand that in December 2013, the City Clerk/Administrator on instructions from the Mayor advised Mr. Norse in person and by e-mail that he would not be "allowed" to record there, but would have to do so from the audience or by standing up throughout the meeting and manually holding the tape recorder up to one of the loudspeakers posted 7' above the floor.

I understand it was his belief that having to stand and hold the recording device above his head for a period of several minutes much less several hours (the average time of a Council meeting) would burden any 67-year old reporter---or someone of any age. I understand he advised you of this concern by letter to which you had no response.

I understand Norse was further advised his only option was he must sit or stand next to the small pocket-sized recorder throughout the meeting wherever the machine was placed or must "appoint" someone to do so. Such a procedure, he said, would unduly, irrationally, and singularly burden him (or any reporter) It would, he told you not allow for an audible recording, prohibit him leaving the machine to consult agenda material, prevent him from interviewing people outside, & otherwise block the usual activity allowed other members of the public, not to mention the media .

I understand that in response when Mr. Norse continued to record at meetings in January through March in spite of the "unattended" rule he was not molested or interfered with.

I understand that in March Mr. Norse sent an e-mail to the Mayor requesting that she publicly clarify that not just he but others would be allowed to record in the traditional fashion he has done, so as not to intimidate such behavior on the part of others nor make a "special case" of him.

I understand that at the next Council meeting (on April 1), several days after this e-mail Mr. Norse was arrested as noted above for replacing his audio device in the usual spot. I understand this appeared to him and others as retaliation for seeking to clarify this policy to benefit of the general public, other reporters, and critics of the City Council wishing to make their own recording of the Council meetings without fear of harassment or arrest for "unattended recording device."

I understand that Mr. Norse is a frequent public critic of City Council actions, particularly as they pertain to harsh punitive policies against homeless disabled people.

I understand the April 1st arrest deterred Mr. Norse from returning to City Council meetings for several months because of the unconstitutional prohibition on his recording from an audible point with the equipment he has in a non-disruptive manner. I understand he advised you of this fact.

I understand that he requested in both in a Brown Act complaint shortly after the April 1st false arrest and then in an e-mail attempt to secure clarification that you stop blocking his ability to record. I understand you made no response to these communications.

I understand that on July 8th at the 5 PM Oral Communications period, Mr. Norse reports (and video documents) that your sergeant-at-arms confiscated three tape recorders, preventing him from recording the meeting for his radio show. When he left the room to use the bathroom, Officer Bush confiscated his fourth recorder—all this, of course, over his quiet objections.

I am advised your sergeant at arms forcibly confiscated all audio recorders that Mr. Norse tried to use recording the meeting in his absence on July 8th and July 22nd after he had stepped away from them.

I am advised that for nearly a week after the July 8th meeting, there was no video file available for public use on the City website, denying Mr. Norse and his audience the right to hear what happened at that City Council meeting even using the Council's own posted audio record. Mr. Norse reports that even had this audio record been posted late in the week, it would have not been available for use at his weekly Thursday evening radio show and so could not be used even if he wanted to.

On July 22nd, at the 5 PM Oral Communications Period, Mr. Norse reports (and video documents) that your sergeant-at-arms again confiscated tape recorders at those points when Mr. Norse left the room. The officer refused to return the recorders until Mr. Norse agreed to leave the meeting, preventing his ability to record the event for his show and to have an independent record of the proceedings..

It is my analysis that there is no rational or legal basis for interfering with Mr. Norse's recorder placement, much less for excluding him from the meeting. Further I believe he has a First Amendment protected right likely to be guaranteed by the courts to record as a part of the

process to petition government for a redress of grievances—which, I understand, Mr. Norse does regularly. If that is true, any interference would be subject to a “strict scrutiny” test requiring there be a “compelling state interest” that is “narrowly tailored” to target a significant harm.

I understand Mr. Norse explained by e-mail some months ago that he'd be willing to make sure that his placement and removal of the tape recorder did not interfere with other speakers who occasionally come up to the podium as he regularly did. I understand he asked you to articulate any other concerns that you might have—which he would be happy to consider and address, which you have not done.

It is my understanding that the courts as well as your local district attorney declined to charge Mr. Norse for “disrupting a public meeting” for the April 1 incident in response to your citizen's arrest on that charge. He was advised by phone that his scheduled arraignment date had been canceled in spite of his advising the district attorney's office that he intended to continue his regular recording procedure.

He also indicated his attempt to have you charged with making a false police report (i.e. that his behavior “disrupted the meeting”) was improperly rejected by your sergeant-at-arms on April 1 and July 8, 2014.

In a previous case where Mr. Norse was falsely arrested for a silent brief mock-Nazi salute after repressive behavior by the chair I understand that the 9th Circuit Court has clarified that absent evidence of a real disruption, the Council has no business excluding a member of the public for behavior and opinions it does not like. And more specifically, that “disrupting a meeting” does not apply as a criminal charge unless the meeting is actually disrupted by a member of the public, not by the City Council's or the Mayor's own action.

Because you must be aware of the refusal of the district attorney's office to prosecute Mr. Norse, subsequent arrests or interference with Mr. Norse appear to be a form of personal harassment, politically motivated repression or an abusive and unreasonable assertion of authority for its own sake.

I am advised Mr. Norse provided you with a “cease-and-desist” demand given the Brown Act violations involved in early August and that you have failed to respond.

**I would suggest that if you wish to exclude Mr. Norse and/or interfere with his tape recording, you file for an injunction rather than falsely claiming that a violation of your**

**rules is per se a disruption of the Council meeting—which is not a tenable position. Particularly in this case where Mr. Norse is clearly not being disruptive and is engaging in traditionally protected activity. Please assure him that he will not be blocked from recording the council meeting from an audible position with the equipment he has available as is guaranteed him by state law and the Constitution.**

**Mr. Norse also wants you to advise the public that they will be permitted to record non-disruptively from any position from the audience that does not interfere with the public business.**

**Likewise, Mr. Norse wishes you to respond clearly to the cease-and-desist demand with a statement that you will do so.**

The California open meeting laws are clear. Your conduct to prevent recording of meetings per the herein violates these clear provisions of the law. The California Government Code states:

The actions of public commissions, boards and councils in California be taken openly and that their deliberations be conducted openly” (Cal.Gov. Code § 54950 – 54963 - The Ralph M. Brown Act - California's open meeting law)).

Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings (Cal.Gov. Code § 54953.5 (a)).

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings (Cal.Gov. Code § 54953.6).

Rights of the Public to access generally means the right to be notified of items to be considered (agenda), to attend meetings of legislative bodies without identifying oneself, to record the meeting, to have access to documents distributed to members of the legislative body, not to pay for the agency’s costs in complying with the Brown Act, to be free from discrimination, to provide public comment (Cal.Gov. Code § 54950.4.A).

Meetings of public bodies must be “open and public,” actions may not be secret, and action taken in violation of open meetings laws may be voided (§§ 54953(a), 54953(c), 54960, 54960.1).

To preserve the public’s rights under the Brown Act, an agency must allow recording and broadcast of meetings (§54953.5(a)), and let the public have a copy of and listen to any recording made by the agency of its open meetings (§54953.5(b)).

The Counsel’s conduct toward Mr. Norse violates California Law as stated above. Likewise, it must be noted that your current conduct appears contrary and in contempt of the California Court’s specific prior Orders regarding your prior conduct toward Mr. Norse.

As you likely recall, in *Norse v. City of Santa Cruz*, 629 F.3d 966 (2010), the Court was quite clear regarding what constitutes disruption of a meeting. Your harassment of Mr. Norse, attempting to prevent the recording of meetings violates the plain letter and spirit of the law, and the said *Norse v. City of Santa Cruz* decision. According to Court’s opinion: as set forth below:

In this case, the City argues that cities may define “disturbance” in any way they choose. Specifically, the City argues that it has defined any violation of its decorum rules to be a “disturbance.” Therefore, it reasons, Norwalk permits the City to eject anyone for violation of the City’s rules-rules that were only held to be facially valid to the extent that they require a person actually to disturb a meeting before being ejected. We must respectfully reject the City’s attempt to engage us in doublespeak. Actual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, nunc pro tunc disruption, or imaginary disruption. The City cannot define disruption so as to include non-disruption to invoke the aid of Norwalk” (*Norse v. City of Santa Cruz*, 629 F.3d 966 (2010)). Please also see *Cohen v. California*, 403 U.S. 15 (1971); *Duran v. City of Douglas, Ariz.*, 904 F.2d 1372, 1378 (9th Cir.1990)” (*Norse v. City of Santa Cruz*, 629 F.3d 966 (2010)).<sup>1</sup>

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<sup>1</sup> The Court also noted “The Supreme Court long ago explained that “in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.” *Tinker v. Des Moines Ind. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969). Even in a limited public forum like a city council meeting, the First Amendment tightly constrains the government’s power; speakers may be removed only if they are actually disruptive” (*Norse v. City of Santa Cruz*, 629 F.3d 966 (2010)). The mayor ignores Norse’s fleeting gesture until Councilman Fitzmaurice throws a hissy fit” (*Norse v. City of Santa Cruz*, 629 F.3d 966 (2010)).... The First Amendment would be meaningless if Councilman Fitzmaurice’s petty pique justified Norse’s arrest and removal” (*Norse v. City of Santa Cruz*, 629 F.3d 966 (2010)).

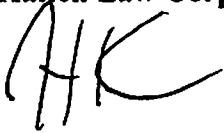
Again, you must stop your illegal and inappropriate harassment of Mr. Norse. Please do not interfere with his legally protected rights to record counsel meetings as he has done long prior. Again, we all share a love for our Santa Cruz community. May I suggest allowing proper and legal community participation, including recordation only fosters a greater outcome for all.

I would also advise that Mr. Norse has told me he is still happy to meet any reasonable concerns you have now, as he has in the past. Mr. Norse can be reached by e-mail at [rnorse3@hotmail.com](mailto:rnorse3@hotmail.com) and by phone at 831-423-4833.

Please do let me know if any of the above is not accurate. As always, please do not hesitate to contact this office any time regarding any matter.

Sincerely,

**Kalfen Law Corporation**

A handwritten signature in black ink, appearing to read 'HK', with a long horizontal stroke extending to the right.

Herman I. Kalfen, JD, REA, NAEP

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