

Officials from Milwaukie and the North Clackamas Parks & Recreation District had both agreed to **an illegal** method for the city's potential withdrawal from the district, according to a Clackamas County **judge's recent decision**.

Milwaukie officials sent the judge's decision to the Oregon Court of Appeals on June 21.

Milwaukie would like the option to withdraw by a vote of the City Council, which was the withdrawal method both parties signed onto in a 2008 intergovernmental agreement with NCPRD. But a county circuit judge ruled on May 16 that the two governments had agreed in 2008 to a method for potential withdrawal that's "ultra vires," which is Latin legalese for something that's beyond their legal authority under state law.

According to county officials and Circuit Judge Jeffrey S. Jones, the **NCPRD Board of Directors (comprised of county commissioners) must agree to allow Milwaukie to withdraw and refer the question to voters districtwide**. County attorneys pointed to a legal decision related to Happy Valley's attempted withdrawal from NCPRD a few years ago, which Milwaukie officials believe is a decision that does not apply to the case.

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Appellate Court Records

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Petition of Adam Khosroabadi; Lisa Batey; Desi Nicodemus; Kathy Hyzy; and Mark Gamba, as the City Council of the CITY OF MILWAUKIE, an Oregon Municipality,

For the Judicial Examination and Judgment of the Court as to the Validity of a City to Withdraw From a Service District Pursuant to an Intergovernmental Agreement,

Petitioners-Appellants.

Clackamas County Circuit Court
No. 22CV22550

A_____

NOTICE OF APPEAL

Exempt from Filing Fee Pursuant to
ORS 20.140

1.

Appellants Adam Khosroabadi, Lisa Batey, Desi Nicodemus, Kathy Hyzy, and Mark Gamba as the City Council of the City of Milwaukie ("Petitioners" or "City") hereby give notice of appeal from the General Judgment and Money Award ("Judgment") entered in this case on May 24, 2023, signed by Judge Jeffrey S. Jones, in the Clackamas County Circuit Court.

2.

The parties to this appeal are:

Appellants: Adam Khosroabadi, Lisa Batey, Desi Nicodemus, Kathy Hyzy, and Mark Gamba, as the City Council of the City of Milwaukie

Interested Party: North Clackamas Parks and Recreation District

Jones' three-page decision provided little explanation for why the judge believed the county's interpretation of state law over the city's interpretation, so it's possible that the state appeals court will shed more light on the case for each side.

It's already been long road for Milwaukie city councilors who voted in August 2022 to follow Happy Valley in exiting NCPRD, but the city's elected officials put the brakes on a November ballot measure in September, saying more time was needed to work out the details. Then the Milwaukie City Council initiated a civil lawsuit against NCPRD in court, asking a judge for validation of the city's preferred method to withdraw from the district.

Like Happy Valley's elected officials, Milwaukie councilors said that their wish to leave stemmed from frustration with the county parks district for slow progress in completing projects.

In response to Milwaukie's vote, county officials reviewed what Milwaukie's potential withdrawal would mean for the parks district. Milwaukie's 21,000 citizens make up almost exactly one-fifth of NCPRD's total population. About 105,000 people live in unincorporated areas like Oak Grove, Jennings Lodge and urban Clackamas.

With the prospect of losing about one-fifth of NCPRD's total tax revenue as well, county officials said in legal filings that a review by county commissioners and a districtwide vote would provide safeguards to allow the citizens within the parks district to challenge the city's wishes.

State legislators passed a bill during the 2020 legislative session to allow Happy Valley to withdraw from NCPRD, which paid back \$14.3 million in unused system development charges to the city to become its own parks and recreation provider.