



November 17, 2022

To: William Guzman, Chief Hearings Officer

From: Margie Sollinger, City Ombudsman
Elizabeth Martinez, Deputy Ombudsman

CC: Appellants Travis Nagels and Austyn Eng
Portland Parks & Recreation

Re: Case Number 3220022 – Request to participate as amicus curiae

The Ombudsman's Office submits this brief regarding the Hearings Officer's First Supplemental Interim Order on Case Number 3220022 (appellants Travis Nagels and Austyn Eng) and requests that the information be considered in the Hearings Officer's review of Appellants' motion for sanctions and reconsideration of remedies.

The Ombudsman's Office received a complaint from Mr. Nagels regarding the tow of his boat, the Rhône Ranger, by Portland Parks and Recreation (Parks). In conducting a review of the complaint, the Ombudsman's Office has kept itself apprised of Nagels and Eng's appeal hearing and gathered information from both Parks and the appellants on the circumstances surrounding the tow. As an office that conducts independent and impartial investigations to help ensure Portlanders are treated fairly and justly by the City, we believe information we have gathered provides important additional context for the Hearings Officer's consideration of the case, particularly whether to issue a civil penalty as a sanction against Parks.

Background of the case

On October 12, 2022, Parks seized and towed the Rhône Ranger, a sailboat moored at the South Breakwater Dock of Governor Tom McCall Waterfront Park, because it was out of compliance with posted regulations. When a vessel is left at a public dock without authorization, it may be declared "abandoned" and subject to the seizure procedures under ORS 830.911 et seq. The Rhône Ranger belonged to Mr. Nagels and Ms. Eng, and Mr. Nagels lived on the boat. Parks noted the presence of the Rhône Ranger at South Breakwater Dock beginning in November 2021, documenting that it was in



violation of dock moorage rules, such as exceeding posted time limits and docking overnight without a permit.

Parks posted a pre-seizure notice on the vessel on September 29, 2022, indicating the vessel could be seized on or after October 9, 2022, if not moved from the dock. The vessel was seized and towed from the dock on October 12, 2022. As part of the seizure, Parks elicited the help of Portland Police to assist with the tow. In the process of conducting the tow, Police detained and arrested Mr. Nagels, originally misidentifying him as a Daniel B., another individual who moored his boat on the dock and had been documented as a safety threat.

Following the tow of the Rhône Ranger, Mr. Nagels and Ms. Eng appealed the tow to the City's Hearings Office. The appeal hearing was held October 24, 2022. At its conclusion, the Hearings Officer decided in favor of the appellants, finding that Parks' seizure of the Rhône Ranger violated the requirements of ORS 830.918(1) to wait at least 10 business days before seizing an abandoned vessel. Believing that the towed vessel was being stored as required by state law, the Hearings Officer ordered Parks to return the vessel to the appellants within three business days.

Instead of returning the vessel to appellants, Parks immediately began to prepare for appellants to submit a claim to Risk Management. Parks pivoted to the claims process because it, through its contractor, had already dismantled and disposed of the sailboat. As such, Parks could not comply with the Hearings Office's order.

The revelation that the boat and any of its remaining contents had been destroyed and could not be returned prompted appellants to file a motion seeking sanctions against Parks. The request for sanctions was based on the contention that Parks knew the vessel had been destroyed prior to the appeal hearing but did not disclose this material fact to the Hearings Officer. Separately and subsequently, Parks notified the Hearings Office that the vessel was dismantled and could not be returned. Based on these filings, the Hearings Officer issued the First Supplemental Interim Order. The Supplemental Order asked for written argument from Parks in response to appellants' request for sanctions and a written rebuttal by the appellants in response to any submission by Parks. Parks submitted their response on November 4, 2022. Written rebuttal from appellants is due on November 17, 2022.

Ombudsman's Office review of the complaint

Based on the Ombudsman's Office review of the complaint up to this point, we believe the maximum civil penalty against Parks is warranted. There is evidence to suggest that 1) Parks was aware at the time of the appeal hearing on October 24, 2022, that the boat had been destroyed, and 2) premature destruction of vessels may be Parks' standard practice based on an erroneous reading of Oregon Revised Statutes (ORS 830.928(b)) on what constitutes a lawful seizure. Parks' lack of candor about material facts during appeal proceedings coupled with the lack of sufficient reassurance in its response brief that Parks has corrected its process – not to mention the devastating consequences of Parks' conduct on the appellant – warrant a sanction. As stated in City Code 22.10.050, a civil penalty may be issued to "deter repetition of the violation or comparable violations by others similarly situated." Issuing

a sanction in this case helps ensure that Parks, and other similar City entities, take suitable responsibility for the immense power they wield over the lives of vulnerable community members. Details of these arguments are below.

1) Evidence of prior knowledge

On October 25, 2022, Vicente Harrison (Parks Health, Safety, and Emergency Manager) provided the Ombudsman's Office a timeline of the events that led to the illegal seizure of Mr. Nagels' boat (email attached as Exhibit A). In this timeline, Parks stated:

- We worked with our contractor and PPB to initiate a towing date (this past Wednesday 10/12[2022]), which automatically generated a new tow letter. Because the 30 days had passed from the original tow and seizure posting date in April, the vessel was still actively seized in place. Because no appeal was received and it remained in violation, we removed the vessel.
- Dispatch received a call from an 'Austin' [sic] on Thursday [October 13, 2022] asking about the vessel, and we provided info that the vessel was in the custody of our contractor and typically is dismantled soon after removal since the appeal period and 30-day post-seizure was back in May. We advised that the personal property could be retrieved by the owner.

From Parks' own timeline, it is clear that prior to the appeal hearing on October 24, 2022, Parks was operating under the assumption that the Rhône Ranger had been dismantled. Specifically, Parks acknowledges that on October 13, 2022, dispatch staff told Ms. Eng that "the vessel was in the custody of [Parks'] contractor *and typically is dismantled soon after removal* since the appeal period and 30-day post-seizure was back in May" (emphasis added). Further, Parks stated, "We advised that the personal property could be retrieved by the owner." These assertions by Parks to Ms. Eng indicate that as early as October 13 – one day after the boat was towed – Parks understood the vessel to be in no condition to be reclaimed by the appellants.

This timeline is corroborated by our own inquiry. When we received the complaint from Mr. Nagels on Friday, October 14, 2022, we were informed that Ms. Eng had called Parks earlier in the week and was told by someone that the boat was already being dismantled. Based on that information, we emailed Parks the same day, asking that Parks halt any further dismantling until we could sort out the facts of the case (emailed attached as Exhibit B).

Other correspondence and documents further suggest that Parks knew at the time of the hearing that the boat had been destroyed. For example, the contractor invoiced Parks on 10/12/22 for the costs of towing and disposing of the Rhône Ranger, all of which appears to have occurred the same day as the tow (invoice attached as Exhibit C). In an email a few hours after the appeal hearing on October 24, 2022, Victor Sanders (Coordinator III, Parks Security) advised another Parks employee that despite being ordered to return the vessel, it "has already been dismantled and is not in a condition that can be returned" (redacted email attached as Exhibit D).

It is also not credible that Parks would order the removal of personal belongings from a vessel during seizure unless it planned to immediately destroy the vessel. According to ORS 830.911 (Authority to seize abandoned vessel), Parks is limited in its authority to enter the vessel: if there's probable cause to believe the vessel is abandoned, Parks may "enter and inspect the interior of the vessel, and objects in plain view within the interior of the vessel, *only to the extent necessary to identify the owners of the vessel*" (emphasis added). There does not appear to be statutory authority to remove, bag and separately store personal belongings found on seized vessels. Indeed, the reasonable inference from various statutory provisions is that the owner's personal belongings will be left in place. For example, the post-seizure notice requirements of ORS 830.931 include a provision that "the vessel *and its contents* may be immediately reclaimed by presenting proof of ownership . . ." (emphasis added).

The fact that the boat had already been dismantled and disposed of was not presented to the Hearings Officer during the appeal hearing of October 24, 2022. Instead, Parks actively misled the Hearings Officer into believing the boat was intact when, regarding the amount of time Parks needed to return the boat to Appellants, Mr. Harrison stated under oath: "we just have to coordinate with the contractor, so we would need at least three days in order for this coordination to take place" (recording at 1:03:03-09; restated again at 1:03:30-1:04:00). As a result of Parks' statements under oath, and the withholding of relevant and crucial information, the Hearings Office and appellants ended the hearing with the reasonable belief that the boat was available to be returned as a remedy for the illegal tow. Allowing the Hearings Officer to order a remedy Parks knew to be a factual impossibility constitutes frivolous and dishonest conduct and a waste of the Hearings Officer's and appellants' time and resources.

2) Potential that premature destruction of vessels may be a pattern or practice

In its response to the Hearings Officer's First Supplemental Interim Order, Parks claims that it did not act in bad faith or direct the vessel to be damaged. It argues that "the errors were inadvertent and caused by miscommunication with the contractor who believed the vessel was subject to the April pre-seizure notice and process." This response is undermined by Parks' own assertions and prior practices, which suggest that Parks – not the contractor – is to blame for the erroneous reading of ORS 830.928(b).

Again, the emailed timeline from Mr. Harrison is relevant: "Because the 30 days had passed from the original tow and seizure posting date in April, the vessel was still *actively seized in place*" (emphasis added). This statement demonstrates that Parks is operating under the assumption that a vessel can be considered effectively "seized" after the pre-seizure notice, without posting a separate seizure notice to the vessel as required by ORS 830.928(b). This same misreading of the law was reinforced by Parks' dispatch, when it explained to Ms. Eng that "the vessel was in the custody of [Parks'] contractor and typically is dismantled soon after removal *since the appeal period and 30-day post-seizure was back in May*" (emphasis added). Of course, under the law, the "30-day post-seizure" could not be "back in May" as no seizure took place in April 2022.

In our review thus far, we have yet to see evidence that Parks posts the required notice-of-seizure on boats it intends to seize in place. Instead, it appears that, as a matter of practice, Parks skips the notice-of-seizure step and proceeds as though it is automatically entitled to dispose of the vessel if enough time has passed since the pre-seizure posting. This results in the destruction of vessels within a few days of being towed. Possible additional instances of this flawed practice occurred in April 2022, when Parks towed several boats, including a couple from the North Breakwater dock. For one boat, the invoice from the contractor indicates charges for towing and disposal on or before April 25, 2022, for an April 18, 2022, tow. For another boat, the contractor submitted an invoice dated April 27, 2022, charging the City for towing and disposal for an April 25, 2022, tow (invoices attached as Exhibits E and F).

3) Egregiousness of consequences and pervasiveness of errors

Parks' failure to lawfully carry out its enforcement authority has devastated and upended Mr. Nagels' life. Through the illegal towing and destruction of the Rhône Ranger, Parks has rendered Mr. Nagels homeless and without many of his personal belongings of significant material and sentimental value, such as a bicycle, ropes and sails, books, personal journals, and artwork by his young son. He has had to borrow clothing to go to work and has been forced to couch-surf and sleep in a garden shed for shelter. He is also presented with the daunting task of articulating a tort claim that details the extent and value of his losses, while also not relinquishing his right to bring additional claims against the City. Additional claims could include the question of whether his arrest violated his civil liberties.

Pursuing tort and civil rights claims is complex. Mr. Nagels is not a lawyer and the precarious circumstances he is enduring are not conducive to navigating complicated government processes. The City is exacerbating the burden it has already placed on Mr. Nagels by withholding any assistance, such as a housing placement, until he files a claim with Risk Management – a bureaucracy that is designed to minimize loss to the City.

Beyond the immediate impacts of Parks' conduct, at nearly every step of the enforcement process, Parks has fallen far short of its duty to Mr. Nagels:

- Parks over-warned Mr. Nagels to the point of ineffectively notifying Mr. Nagels of Parks' enforcement intentions.
- Parks did not engage social services to find a constructive solution for Mr. Nagels, who was living on his boat. This contrasts with how the City handles people living in tents, cars, or RVs.
- Under Oregon Administrative Rule 250-026-0020, Parks is required to provide the Oregon State Marine Board with a copy of the pre-seizure notice on the same date it is sent to the owner. Parks did not do this.
- The notice of the right to appeal is drafted in a way that misdirects community members about who to call to file an appeal.
- The notices use calendar days instead of business days to calculate when a seizure may take place, as ORS 830.918 requires.

- The notices do not specify calendar or business days regarding the right to appeal, as ORS 830.918(5) and City Code 3.130.020 require.
- Time periods and deadlines in the notices are based on when an event could have occurred, rather than when it actually occurred.
- It is not clear that Parks had legal authority to remove Mr. Nagels from his boat to tow it. Parks could have established legal authority by issuing an exclusion notice to Mr. Nagels. If Mr. Nagels subsequently violated the exclusion, then police could have arrested Mr. Nagels for criminal trespass.
- Parks did not document safety threats involving Mr. Nagels in their daily ranger reports, nor did Parks file any police reports pertaining to Mr. Nagels.
- Instead of issuing an exclusion notice or waiting for a time when Mr. Nagels was not on his boat, Parks needlessly escalated the situation for Mr. Nagels by bringing a police unit to assist with the tow. Mr. Nagels attests that he was taken off his boat at gunpoint.
- Parks miscommunicated with the police about with whom Parks needed assistance. Police initially thought they were brought on to help with a Daniel B. who, unlike Mr. Nagels, was a documented and legitimate safety threat.
- It is not clear that Parks had legal authority to remove Mr. Nagels' personal belongings from the vessel.
- Parks engaged a contractor to remove all of Mr. Nagels' personal belongings but did not inventory the items. As a result, Parks cannot account for Mr. Nagel's missing personal belongings. This contrasts with how the police and the Homeless and Urban Camping Impact Reduction program treat personal belongings.
- Parks allowed the contractor to discard damp belongings, arguing wrongfully that damp items are hazardous to store.
- The post-seizure notice does not include a description of any personal property, as required by ORS 830.931(3)
- Parks engaged a contractor who destroyed the boat directly after towing it, rather than storing it for 30 days.

Parks' response to the First Supplemental Interim Order has not provided appropriate reassurances that they have remedied their errors or that their boat seizure process will be lawful in the future. Correcting small mistakes related to pre-seizure notices, such as using business days instead of calendar days, and post-seizure notices, such as using the actual seizure date, is a minimal response and does not indicate that Parks understands the gravity of the situation or the scope of its failings. Parks' assertion that it "will incur the removal and transportation fees associated with the premature seizure of the vessel which are estimated to be approximately \$4,470" may not be entirely accurate. Parks could have sought reimbursement from the Oregon Marine Board's Salvaged Vessel Subaccount. Funds from this account are used to reimburse enforcement agencies for expenses related to the removal of abandoned vessels.

Parks' response also does not address the many other deficiencies in its process, such as those listed above. Further, Parks' explanation that the errors were due to a miscommunication with their contractor overlooks the fact that Parks is ultimately responsible for the work its contractors perform. Parks cannot

simply abdicate responsibility; it is accountable for assuring that the work a contractor conducts on its behalf is lawful.

Alternative Remedies

Because the consequences of Parks' errors are so egregious, the Hearings Officer may, ironically, have fewer options for remedying the unlawful conduct. However, one option to consider is a remedy for Parks' failure to provide adequate notice of the right to appeal, in violation of City Code Subsection 3.130.020 (Timely and Adequate Notification of Right to Appeal Required). State law provides that an owner of a vessel may request a hearing within 10 business days after pre-seizure notice is given. The standard form that Parks uses for pre-seizure notices does not indicate either calendar or business days, stating only that the owner may "appeal this pre-seizure decision within 10 days of the posting date." This form, which was issued to appellants, does not meet the requirement that notice of the right to appeal specify calendar or business days.

The Hearings Officer is authorized under City Code 22.10.025 to enforce the requirements of Section 3.130.020 and is given some discretion to order a just and reasonable remedy related to the failure to provide adequate notice. The provision includes a non-exhaustive list of possible remedies, but it prohibits the Hearings Officer from awarding "monetary damages" to an appellant. Notably, the language does not prohibit the award of money as equitable relief. Equitable relief is appropriate in this case, as Parks' unlawful conduct has prevented the Hearings Officer from awarding other types of relief, including ordering the return of the boat and all its contents.

If the Hearings Officer determines that sanctions are warranted, we urge the Hearings Officer to direct the monetary penalty to appellants. To do otherwise would mean that one part of the City (Parks) would make a payment to another part of the City (Office of Management and Finance), an offensive result that once again leaves the appellants without justice or recompense.

Other options to consider might be for the Hearings Office to keep the case open and require periodic updates to 1) ensure that the City, through its other avenues, makes appellants whole, and 2) ensure that Parks addresses the many deficiencies in its enforcement procedure. Another possibility, if amenable to the appellants, could be for the Hearings Officer to structure a remedy whereby any sanction could be waived, in full or in part, if the City secures Mr. Nagels affordable rental housing.

From: [Harrison, Vicente](#)
To: [Sollinger, Margie](#)
Cc: [Lofgren, Todd](#); [Long, Adena](#)
Subject: RE: time-sensitive complaint - problems continue
Date: Tuesday, October 25, 2022 5:48:51 PM
Attachments: [image003.png](#)
[image014.png](#)
[image015.png](#)
[image016.png](#)

Greetings Margie,

Thank you for taking the time to consult with Travis. I spoke with Travis this afternoon and have followed up with information to begin a claim for his vessel and or any personal property that he claims was not returned by the city contractor. We confirmed with contractors that all personal items were removed that were not damp and therefore hazardous for storage. We will also be following up with Travis as we coordinate resources of clothing and a potential voucher for temporary housing if available. **The vessel has been dismantled beyond what is going to be seaworthy and is not in a condition to be viewed.**

The following information outlines why we believed we were beyond the allotted timeframe to store the vessel that has been dismantled. After countless attempts - our initial seizure letter was issued in April 2022 and was well beyond the appeal stage from both April and October seizure letters issued. Based upon the ruling by the codes hearing officer our second attempt to tow this vessel was 1 day earlier than the allotted 12 business days which deemed our attempts at voluntary and city code compliance obsolete.

“Rhône Ranger out of compliance vessel” Timeline -

- Park Rangers first observed the “Rhône Ranger” vessel on the South Breakwater Dock on 12/08/21. The South Breakwater Dock is marked by multiple signs as a loading and unloading-only area; mooring is prohibited.
- Between February and April, Rangers marked this vessel with warning notices multiple times. This documentation can be found in the QuickCapture data system.
- On April 4th, we begin enforcement proceedings to remove the vessel from the dock since it had not moved and very few instances of successful contact were being made. A notice of pre-seizure was left on the vessel (see previously sent photos of the postings left on the vessel; also attaching an example of the sticker posting).
- A notice of pre-seizure was also mailed at that time to the registered owner based on state records (Travis Nagels).
- **We did not receive an appeal request or hear any correspondence from Travis or anyone else with an interest in the vessel.**
- **After having not heard from anyone interested in the vessel, we began the towing process: on April 29th, our contractor and Rangers went to tow the vessel, but a person who we believe was Travis was on site and refused to leave the vessel and we could not complete the tow. Later, we heard from our contractor that the person on the vessel used threatening language as they left, so they were concerned about returning without police assistance.**
- Between May and October, Rangers were not able to gain voluntary compliance from Travis when patrolling the South Breakwater Dock.
- **We worked with our contractor and PPB to initiate a towing date (this past Wednesday 10/12), which automatically generated a new tow letter. Because the 30 days had passed from the original tow and seizure posting date in April, the vessel was still actively seized in place. Because no appeal was received and it remained in violation, we removed the vessel.**
- Dispatch received a call from an ‘Austin’ on Thursday asking about the vessel, and we provided info that the vessel was in the custody of our contractor and typically is dismantled soon after removal since the appeal period and 30-day post-seizure was back in May. **We advised that the personal property could be retrieved by the owner.**
- A hearing was arranged beyond the timeframe for an official appeal that resulted in Travis’s favor.

We will continue to work with Travis to provide resources we can obtain through city partnerships for individuals suffering from homelessness. I will update you as these resources become available.

Sincerely,

Vicente S. Harrison *(he, him, his)* [Why do I list my pronouns?](#)

Health, Safety, and Emergency Manager | Operations & Strategies

503-823-5459 (office) | 503-314-6224 (mobile)

Monday – Friday and weekends for emergencies only, 8:00 am – 5:00 pm

1120 SW 5th Avenue, Suite 858 | Portland, Oregon 97204



From: [Sollinger, Margie](#)
To: [Lofgren, Todd](#); [Harrison, Vicente](#)
Subject: time-sensitive complaint
Date: Friday, October 14, 2022 4:23:00 PM
Attachments: [image001.png](#)

Hi Todd and Vincente,

Sorry for the late Friday email, but I am hoping you can help me put a hold on further action so we can review further next week. We received a complaint today from Travis Nagels. He is the owner of a houseboat that PP&R noticed and towed as abandoned. The pre-seizure notice is numbered PPRV0033.

We don't often deal with abandoned tows of boats on the water by PPR, so I have a lot of process questions. As I understand it (although I haven't yet spoken at length with Mr. Nagels), Mr. Nagels said he was attempting to get more time to move the boat but was not able to reach anybody. When City officials arrived to tow the vehicle on Wednesday, Mr. Nagels was there and was arrested. At a minimum, the presence of an owner suggests a lack of abandonment. Since being released from jail, he has sought to determine where his boat is being held and also how to go about collecting his personal belongings that are on the boat. I didn't see any of that info on the notice and he says nobody has provided him that information.

Also, he said he's tried reaching someone at PP&R. He got a call back from someone, but that person would not provide a name, didn't tell him where to go to get his belongings, and indicated his boat was already in the process of being dismantled.

For today, can we put a stop to any dismantling and provide the information for Mr. Nagels to retrieve his personal belongings?

Thanks,
Margie



Margie Sollinger (she/her)
City Ombudsman
(503) 823-4503
[Website](#) | [Twitter](#)

A-1 MARINA
C/O DANIEL GULBRANDSON
PO BOX 83525
PORTLAND, OR 97283

10/12/2022
Invoice : 101222

Victor Sanders
Ciji Shelton-Flores
Vicente Harrison

OR 586YE 33 ft Ranger Sailboat

Towing and removal Riverplace breakwater	
And removal from water 10/12/22	\$1,620.00
Transportation	1,300.00
Processing for disposal	600.00
Lawful disposal	<u>950.00</u>
Total Due	\$ 4,470.00

From: [Sanders, Victor](#)
To: [Curtis, Vanessa](#)
Cc: [Harrison, Vicente](#)
Subject: Rhone Ranger / Travis Nagels Case
Date: Monday, October 24, 2022 3:38:44 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[CaseFile-RhoneRanger-Oct22final.pdf](#)
[image003.jpg](#)

Vanessa – [REDACTED]
[REDACTED]. See attached case file.

The City seized the vessel on October 12th, after following the procedures outlined by the Oregon State Marine Board.

The Hearing's Office heard Mr Nagels late appeal on October 24th and determined that the city acted 1 day early in the towing of the vessel per state law allowing 10 *business* days for appeal. It was an adverse ruling against the City.

Therefore, PP&R was ordered to return the vessel. However, the vessel has already been dismantled and is not in a condition that can be returned. [REDACTED]
[REDACTED]

Personal property was already removed by Rapid Response and returned. See photos below.

Victor

A-1 MARINA
C/O DANIEL GULBRANDSON
PO BOX 83525
PORTLAND, OR 97283

4/25/2022
Invoice : 042522

A1 Marina
PO Box 83525
Portland, OR 97283

Vicente Harrison
Portland Parks Supervisor

1988 26ft. Larson OR 927AEM South Breakwater RiverPlace

Towing and removal from water 4-18-2022	\$1,170.00
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Transportation	350.00
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Processing for disposal

*gasoline found in freshwater tank	850.00
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Lawful disposal	<u>500.00</u>
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Total Due	\$ 2,870.00
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A-1 MARINA
C/O DANIEL GULBRANDSON
PO BOX 83525
PORTLAND, OR 97283

04/27/2022
Invoice : 042722

A1 Marina
PO Box 83525
Portland, OR 97283

Victor Sanders
Ciji Shelton-Flores

22 Ft. Chrysler sailboat North Breakwater Riverplace

Towing and removal from water 4-25-2022	\$1,170.00
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Transportation	350.00
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Processing for disposal	350.00
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Lawful disposal	<u>500.00</u>
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Total Due	\$ 2,370.00
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