



## How the City of San Angelo Sold Out the Business Community

by Joe Hyde

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*Opinion and Analysis*

The newest San Angelo City Council member, Councilwoman Elizabeth Grindstaff

foreshadowed what will likely become of any complaint that a member of the San Angelo business community has about Republic Services and its suspect "Total Fuel Environmental Recovery Fees." The invoice line item, that Republic said it is now investigating, equals approximately 32 percent of regulated service fees on commercial dumpster customer invoices since the 2000s

"I think that it is true that our business community only right now has the strength of the council to help them get those overcharges paid back," she said Tuesday at the regularly-scheduled City Council meeting just before the 4-3 vote to approve the new contract with Republic for trash pickup and landfill management for at least the next 10 years.

Grindstaff, along with Councilman Rodney Fleming and Councilman Don Vardeman asked for time to settle the suspect charges before moving forward with the contract.

"And for that reason, my support is to ask



The City council hears City Operations Director Shane Kelton explain the terms of the new contract with Republic Services at the July 1 City Council meeting. (LIVE! Photo/Joe Hyde)

**We believe San Angelo businesses have been overcharged for years.**

Petition for a real investigation into overcharging of unauthorized fees for solid waste services.

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Republic, in good faith, to extend their existing contract by a period of six months. Also, pay for an independent audit, [with the auditor] chosen by an independent third party, and proceed that way. And once the overcharge is settled, and repaid, we can consider the new RFP for the service going forward,” Grindstaff continued.

Grindstaff didn’t go this far in her speech, but what she was foreshadowing was that without the capability of the City to use the new contract’s approval as leverage, there is little evidence that Republic will faithfully settle the overcharges.

### **A History of the Suspect Fees**

The story of the overcharges first broke on April 1 when the allegations were made in the cover letter of the only other competitor for the trash contract, Texas Disposal Systems’ CEO Bob Gregory. The charge was vague, but as the next two weeks unfolded, Gregory found more supporting documentation to his claims, to include quantifying the amount as 32 percent of the ordinance-approved rates. San Angelo LIVE broke that story on April 10. The local paper followed shortly thereafter, detailing that even Scripps was paying the suspect fees.

On April 30, the City of San Angelo staff, lead by City Manager Daniel Valenzuela held a press conference, where Valenzuela said, “Our internal auditor, and other members of our city staff are working very closely with Republic to determine the basis for those charges.”

As the clock ticked down to the date that the existing contract would expire at the end of July, I made several inquiries about how the investigation was going to City Public Information Officer Anthony Wilson. Wilson demanded corrections to any reference to an investigation. He said it was “researching”; “investigating” was loaded language, inferring wrongdoing. To every inquiry, the answer was that he had no information to release, or simply “no.”

Then, on June 15, the local paper reported that the internal auditor, City Auditor Steven Mahaffey, was getting ready to give a “report of findings from his investigation” to the City’s audit committee. Later, the findings would be briefed to the City Council in executive session.

Much hope was placed on these findings, and questions were asked if the report would be in writing?

In a later phone interview with Mahaffey on June 23rd, he said that there would be no written report. And that “all questions have not been answered in the investigation yet, but is anticipating more information to flow from his office.” My translation is that Mahaffey had long ago exhausted all internal methods to find the authorization for the suspect charges and was waiting for Republic to explain how they calculated the 32 percent.

After nearly two months of opportunity to research the suspect fees, working with the City auditor, and, if you believed Valenzuela at the April 30 press conference, with other members of City staff, Republic issued a press release indicating that they were just then initiating an investigation into the fees on June 27.

The press release was a replacement for what earlier that week was heralded as an upcoming press conference that Republic would hold. My impression of what Mayor Morrison told me

earlier last week was that this upcoming press conference would settle everything. Republic would offer refunds, and everyone will be pleased. That didn't happen. Instead, Republic announced that their investigation was just starting, in a press release.

Councilwoman Charlotte Farmer, who claimed that she was briefed on the City auditor's findings, claimed that the amount of the unauthorized charges was only the 11 percent Environmental Recovery Fee, excluding 21 of the 32 percent as what she explained were authorized fuel charges. Twice the Council, she said, authorized the fuel charges, in the 2000s (she repeated this claim Tuesday when explaining her support of the new Republic contract).

I have never seen any Ordinance documentation authorizing more than six or seven percent of the 32 percent surcharge. Despite a two-month time to research, and working closely together, neither Republic or the City have even quantified exactly how much of that 32 percent allegation they believe is suspect, if even at all.

### **Lawsuit**

In a press release trumpeting its financial gains in the fourth quarter of 2013, Republic Services brags about its fuel recovery fees as being a source of revenue.

"Revenue for the three months ended Dec. 31, 2013, increased to \$2,141.5 million from \$2,028.3 million for the comparable 2012 period. This increase in revenue of 5.6 percent was made up of increases in average yield of 1.3 percent, *fuel recovery fees of 0.2 percent*, volume of 2.5 percent, recycled commodities of 1.0 percent and acquisitions, net of divestitures of 0.6 percent," said Republic after the end of the fourth quarter last year (emphasis mine).

Acme Iron and Metal and Mayfield Paper Company are plaintiffs on a lawsuit that they filed Monday demanding a refund. The aim of the plaintiffs is to get court authorization create a class action lawsuit. Plaintiff's lawyers will ask the court for treble damages on at least one of the causes of action, they said.

Republic's financial statements downplay previous attempts to recoup recovery fees by using the courts. According to Republic financial filings, two instances of plaintiffs attempting to create class action against Republic under similar situations have been thwarted.

The first, in Arizona, CLN Properties, Inc. and Maevers Management Company, Inc. filed a lawsuit against Republic Services, Inc. and Allied Waste Industries, Inc., a Republic subsidiary. The class action status was denied twice. Republic said in the 10-K that the plaintiffs' only hope was to collect small amounts of money individually. "Based on the District Court's opinion and the small amounts at issue with respect to the 10 remaining plaintiffs, we will no longer report on this case after this Form 10-K," Republic said.

In another case in Alabama, Klingler's European Bake Shop & Deli, Inc., filed a complaint against BFI Waste Services, LLC, a Republic subsidiary. The plaintiffs attempted to form a class action but were denied by the courts. In the end, all the plaintiffs could hope for was \$1,600 in refunds, Republic said.

This past performance of lawsuits against Republic show that legal action is an uphill battle for Republic's challengers. No wonder Republic feels little compelling reason to be transparent on its surcharges and fees, or to come clean early. Even as the City was supposedly researching the suspect fees, the City allowed Republic to continue to invoice commercial customers the suspect amount.

With yesterday's vote, the San Angelo City Council has removed the only remaining and *real* leverage that the citizens of San Angelo have as a community, that is, the renewal of the contract. Do you think anything will happen to happen to resolve the fees?

Councilwoman Grindstaff was right.

"I think that it is true that our business community only right now has the strength of the council to help them get those overcharges paid back," she said.

### **Stanley Mayfield's Plea to City Council**

*A speech delivered to City Council Tuesday before the vote on the new trash contract*

Thanks to you, and a special thanks to TDS [Texas Disposal Systems] for persevering and bringing so many of these things to our attention. I've got to be honest with you. The coffee shop evaluation of this entire process is that it doesn't pass the smell test. Too much secrecy, no exposure, no sunlight. No opportunity for reviewing, looking, discussing, examining.

And this is not a small contract. We've heard numbers. I asked for numbers several months ago and never got a reply from you. But if we're looking at over \$400 million in value, or even more than that, I think it deserves a public airing, examination, and when those questions are answered and we're through with that process, we'll be ready to vote on it.

I'm very grateful to TDS for taking the time, and spending the money and investing their time, even though you don't intend for them to be the winners in this. But I think they're helping to do what is right.

Now, in discussing this big debate on unauthorized charges... First of all, I've got to take primary responsibility. I wasn't auditing, taking care of my bills, I wasn't checking them. I suppose I can pass the buck to the City Council, supposing that the City is taking care of this because it was their franchise. But my guess is that Republic saw an opportunity to achieve a better operating margin. That's what they are about. On their website, [it says] these environmental fees are all about margin.

Why has the City not made it a priority to completely investigate these claims of unauthorized charges before proceeding with a recommendation to approve this contract? The lawsuit is now filed against Republic on this. Why is the City considering moving forward with such a broad brush. Republic now appears to be admitting the unauthorized charges. How can the City move forward with a party that is accused of, and now admitting to, unfaithful performance in the current contract? What guarantee do we have that their compliance with the contract in the

future will be any different that it has been in the past? Where is the integrity in this relationship? [A relationship] I will call, 'catch me if you can'?

I am very apprehensive [about] moving forward with a vendor that has not shown faithfulness and integrity? I urge you to slow this thing down. Air it out. Let the citizens look at it. Let the business community look at it. And they will appreciate your endurance in doing so.

*Mayfield is the founder and CEO of San Angelo-based Mayfield Paper Company.*