



Civil Service Commission

# The City of Morgantown

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## **AGENDA & NOTICE OF SPECIAL MEETING** **FIRE CIVIL SERVICE COMMISSION**

**May 12, 2021**

**City Hall - Council Chambers and WebEx**

**9:00 a.m.**

To protect public health during the COVID-19 pandemic, this meeting will take place via WebEx at <https://cityofmorgantown.my.webex.com/cityofmorgantown.my/j.php?MTID=m01b2ed167f71341cdf342133dc6b1e78> using the meeting number 132 347 7163 and password VAaMkJTg236 (82265584 from phones and video systems). The public can also listen live by calling 415-655-0001 using the access code 132 347 7163. This meeting will also be held in person at City Hall.

- 1. CALL TO ORDER**
- 2. APPROVAL OF MINUTES:** February 17, 2021, Regular Meeting, and April 14, 2021, Emergency Meeting
- 3. OLD BUSINESS**

The Fire Civil Service Commission (“Commission”) will hold a hearing as requested by forty-seven Firefighters about the City of Morgantown’s (“City’s”) recent decision to end the longstanding practice of paying the Firefighters “shift-differential” pay for work during afternoon and evening shifts of their 24-hour workday because this has resulted in a reduction in pay.

The parties agree that this Commission’s authority is derived from West Virginia Code §§ 8-15-11 and -25. Section 8-15-25(a) requires “just cause” for a member of the fire department to be removed, discharged, suspended, or reduced in rank or pay. If a demand is made by a member of the fire department, Section 8-15-25(a) also requires the Commission to hold a public hearing to determine if “just cause” existed for a removal, discharge, suspension or reduction in rank or pay.

The parties also agree that *Bogges v. City of Charleston*, 765 S.E.2d 255 (W.Va. 2014) applies to this Commission when interpreting § 8-15-25 and deciding whether the reduction in pay resulting from the City’s decision to ending the longstanding practice of paying the Firefighters “shift-differential” pay for work during the afternoon and evening shifts of their 24-hour workday. *Bogges* establishes that any removal, discharge, suspension, or reduction in rank or pay must be related to disciplinary matters to provide jurisdiction for the Commission to hear this matter.

At the Commission’s April 14, 2021 meeting, the City Attorney argued that the shift-differential policy had been misapplied, and the action taken by the City Manager to have the policy applied correctly going forward does not qualify as “discipline.” The Firefighter’s counsel asked for the opportunity to introduce evidence concerning the timing of the policy correction/cancellation of the entire shift-differential pay for only the 24-hour Firefighters and how it relates to the ongoing wage and hour litigation between the City and the Firefighters to demonstrate how said policy change/cancellation constitutes a disciplinary matter. Based on argument by counsel for the respective parties alone, the Commission could not decide whether the reduction in pay being challenged

was a disciplinary matter, affording it jurisdiction to hear the dispute. Rather, the Commission must hear evidence from the parties, not just argument and factual proffers from their respective counsel, to decide whether the pay reduction is related to a disciplinary matter affording it jurisdiction.

Accordingly, an evidentiary hearing will be held on May 12th, beginning at 9:00 a.m. Because the Commission is hearing evidence to decide the question of jurisdiction, the Firefighters will have three hours to present their case and call witnesses. However, the Firefighters are encouraged to use less time, if possible. The City will have the opportunity to cross examine witnesses and present its case following the conclusion of the Firefighters' case. There will be no rebuttal once the City presents its witnesses, if any. The evidentiary hearing will conclude on May 12th, but the Commission will take the matter under advisement and then issue a written decision.

The proceedings will be recorded by a court reporter, and witnesses will be sworn under oath. The City and the Firefighters are encouraged to collaborate on the production of witnesses and to limit the presentation of redundant evidence and testimony.

Written pre-hearing submissions, if any, must be received by the Fire Civil Service Commission by 5 p.m. on May 5th. If the City will not agree to produce witnesses requested by the Firefighters, the Firefighters may request that the Commission issue subpoenas, and the Commission will consider the request.

#### **4. NEW BUSINESS**

The Firefighters and the City, based upon the representations, proffers, and agreements of their attorneys during the Emergency Meeting on April 14th, have agreed to set a hearing for May 12th, and have additionally agreed to mediate this matter by April 30th, and to have the mediator provide a brief report on the mediation to the Commission.

#### **5. EXECUTIVE SESSION**

- A.** Pursuant to West Virginia Code Section § 8-15-1, et. Seq., to obtain advice from Counsel – If Necessary

#### **6. MISCELLANEOUS**

#### **7. ADJOURNMENT**

CC: Mark Caravasos, Fire Chief  
Shane Mardis, Chair  
Noel Hoffman, Commissioner  
Michael Jacks, Commissioner  
Sandy Dent, Fire Secretary  
John Bihun, Human Resources  
Mitchell Beall, Morgantown Firefighter IAFF Local 313 President  
Joshua D. Miller, Esq., Counsel for Firefighters  
Wendy Adkins, Counsel for Fire Civil Service Commission  
Ryan Simonton, City Attorney

Posted: 05/04/2021

If you need an accommodation, please contact us at 304-284-7434.