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DATE: March 27, 2023
TO: Carol O'Donnell, Chair
Bonnet Shores Fire District Council
RE: Three-year terms of Council members

You have asked my opinion with regard to the continuance in office of members of the Council who were elected more than three years ago. These members have remained in office because there was no 2022 Annual Meeting to elect Council members due to the settlement agreement, which required a change in voting procedures to accommodate an increased number of eligible voters. Under Article I, sec. 1 of the By-Laws, if there is no Annual Meeting in any year, the business of that meeting is to be conducted at the next Annual Meeting.

I understand that some in the Fire District may be asserting that “holdover” Council members who have served for more than three years should not be permitted to vote on Council matters. This would be completely inconsistent with the Fire District’s own by-laws, the Rhode Island Constitution, and many analogous provisions of Rhode Island municipal and statutory law.

From my research I conclude that in the absence of an Annual Meeting, Council members whose terms would otherwise have expired continue to serve until the election of their successors. There are many authorities that support this conclusion.

First Article III, sec. 2 of the BSFD By-Laws specifically provides that all officers serve until his or her successor is elected.

This is entirely consistent with the Rhode Island Constitution, which provides in Article XV, sec. 3:

All officers filling any office by election or appointment shall continue the duties thereof, until the end of the terms to which they were appointed or elected, and until their offices shall have been abolished or their successors elected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

Similarly, the General Laws provide that municipal officials serve “until their successors are lawfully qualified to act, except where it is expressly provided to the contrary.” R.I. Gen. L. sec. 45-4-15. And the Town of Narragansett has a similar provision in its charter, stating that members of the Narragansett Town Council serve for two year terms “and thereafter until successors are elected and qualified.” Narragansett Charter, sec. 2-1-1-. Similar language appears in the General Laws for officials elected by the General Assembly, R.I. Gen. L. sec. 36-1-8, and officers appointed by the Governor. Sec. 36-1-6.

These authorities clearly contradict any claim that Council members automatically lose the authority to act upon the passage of three years. I am unaware of any Rhode Island legal authority that would support such an argument. Rather, consistent with Rhode

Island law applicable to state and municipal officials, the BSFD By-laws plainly keep members of the Council in office until there are legally elected and qualified successors to replace them. Thus, Council members elected more than three years ago may continue to act as such until there has been an election to replace them.