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JEANNINE LAIBLE
HUMAN RESOURCES DIRECTOR

October 29, 2025

Councilmember Laura Toy
Via Email: ltoy@livonia.gov

Re: Revoking Your Retirement System Opt-Out

Dear Laura,

As you know, this issue has been reviewed many times. For convenience, here is a timeline of the pertinent documents addressing this issue:

| | |
|---|---|
| 11/30/1987 | Handwritten note indicating your decision to opt out of the retirement plan. |
| 12/29/1998 | Handwritten note to Retirement Board from L. Toy regarding deferring retirement benefits. |
| 01/15/1999 | Letter to L. Toy regarding benefits noting irrevocable opt out option taken in 1987 |
| 09/18/2001 | Memo to Mayor Kirksey from M. Rutan regarding L. Toy's opting out of retirement system, including ordinance and CBA documentation. |
| 02/23/2011 | Note to the Retirement File regarding L. Toy's decision to opt out |
| 03/03/2011 | Memo from R. Biga to Civil Service Commission regarding L. Toy's decision to opt out of the Retirement System. |
| 04/04/2011 | Letter from C. Studstill to R. Biga regarding L. Toy's liquidation of DC plan account on 1/11/1999 |
| 11/18/2014 | Letter to L. Toy from R. Biga regarding opting out and accompanying ordinances |
| 01/28/2016 | Email from D. Maier to L. Toy regarding a follow-up from conversation about opting out of retirement system. |
| 11/22/2024 | Email from J. Laible regarding follow-up |

The spreadsheet report (attached via email as "Laura Toy Benefits Calculation Final DC as of 08292025") was prepared by our Accounting/Payroll team. It details your earnings from 2008 through 2025, along with the corresponding contributions that both you and the City would have made to the Defined Contribution Plan ("DC") and the Retiree Health Savings Plan ("RHSP"). At the bottom of the spreadsheet, you'll find the total amounts for each period of employment highlighted in green. The report separates your service into two periods: 2008–2015 and 2018–2025, with totals shown in column T for the DC plan and column X for the RHSP.

Livonia, MI 48154

Dear Mayor Brosnan:

The City has asked me to review and provide legal guidance regarding Council Member Laura Toy's right to pension benefits for her service as a City Council Member. I have reviewed information related to Council Member Toy's request and I spoke with her regarding the issue to fully appreciate her concern. I understand that Council Member Toy is specifically asking the City to review whether she is entitled to any additional retirement benefits beyond what she previously received while serving as City Treasurer. For the reasons described below, I have determined that, under the current state of the retirement ordinance, Council Member Toy is not eligible for retirement benefits for the period of time she served as a member of the City Council.

**BACKGROUND**

Council Member Toy served in various representative positions for the City, including the following:

Ecology Commission – 6/1/72 – 3/1/75
Youth Commission – 3/1/75 – 3/1/80
City Council Member – 1/1/88 – 12/31/95
City Treasurer – 1/1/96 – 12/31/98
City Council Member – 1/1/08 – 12/31/15
City Council Member – 1/1/18 - current

Council Member Toy first served in a position for the City that would entitle her to a pension in January 1988, when she was elected to City Council. Section 2.96.160 of the Livonia Employees Retirement Ordinance, which contains guidance on the rights of salaried elected officials to obtain and opt-out of retirement benefits, provides:

> "… all salaried elected officials assuming office after December 31, 1985, may be excluded from membership in the retirement system at their option upon written notification to the board … Any salaried elected official who has exercised the option to be excluded from membership in the retirement system shall be prohibited at any time thereafter from becoming a member of the retirement system while serving in that particular elected office, and from claiming any opted-out time as retirement credit if serving the city in any other elected, appointed or paid position.

On November 30, 1987, after first being elected to City Council, Council Member Toy submitted a note pursuant to Section 2.96.160 which stated:

> To Whom it may concern,
>
> Just a note to say that I as a city council member will not be applying or accepting any pension plan at this time.

Based on this note, Council Member Toy did not receive retirement benefits during her early terms as a member of the City Council.

Subsequently, Council Member Toy was elected to serve as the City's Treasurer, beginning on January 1, 1996. Because the position of Treasurer was a different "elected office" than the position she held during her prior service as a member of City Council, the November 30, 1987 note she sent had no application and did not result in her exclusion from the Retirement System while serving as Treasurer. Council Member Toy began participation in the City's defined benefit plan until March 17, 1997, at which time she converted from the defined benefit plan into the City's newly created defined contribution plan. On January 11, 1997, following completion of Council Member Toy's service as Treasurer, she liquidated her defined contribution account and received $29,432,84, which included her accumulated contributions and earnings in an amount of $5,605.00.

After completing her service as a Treasurer, Council Member Toy held no positions with the City until she was again elected to City Council, with a term beginning January 1, 2008. As noted above, she served as a City Council Member from 2008 through 2015 and once again from 2018 until the current date. During this time, Council Member Toy has not been a member of the Retirement System.

## ELIGIBILITY TO PARTICIPATE IN THE RETIREMENT SYSTEM

During our telephone conference, Council Member Toy expressed an interest in receiving some retirement benefit for the time she served as a City Council Member from 2008 through 2015 and from 2018 through the current date. As noted above, Section 2.96.160 of the Retirement

Ordinance provides "any elected official who has exercised the option to be excluded from membership in the retirement system shall be prohibited at any time thereafter from becoming a member of the retirement system." Since Council Member Toy opted out of the retirement system as a City Council member on November 30, 1987, it is clear that under the current language of the Ordinance, she is ineligible to become a member of the "Retirement System" while serving as a City Council member.

At the time of the opt-out, Council Member Toy was eligible to participate in the City's defined benefit plan. Following her decision to opt-out, the City converted to a defined contribution plan for future employees, a plan that remains in effect for current and future City Council members. So, there remains a question as to whether the current defined contribution plan is a part of the "Retirement System" that was in effect when she chose to opt out in 1987.

Based on my review of the defined benefit plan and the retirement ordinance, as well as my understanding of the retirement plans, it is clear that the old defined benefit plan and the current defined contribution plan are part of the same "Retirement System." Both plans are included in the City's Retirement Ordinance and both plans are administered by the same Board of Trustees. Also, noteworthy, both plans utilize the same funds to provide disability retirement benefits. In fact, members of the defined contribution system who are granted a disability retirement are converted to a defined benefit retirement.

Two provisions of the defined contribution plan provide further guidance on this issue. Section 2.97.060, Membership in the Retirement System provides "Qualifications for membership in the DC Plan are the same as those provided in the DB Plan in Section 2.96.160 of the Livonia Code of Ordinances."

Section 2.96.050, Definitions, provides the most significant support for the position that the defined contribution plan is part of the same "Retirement System" as the defined benefit plan. That section provides: "Retirement System means the system for administration and operation of the retirement plan, as established by the provisions of Chapters 2.96 and 2.97 of the Livonia Code of Ordinances."

A determination that the defined benefit and defined contribution plans are part of the same retirement system is consistent with past determinations of the City. Two situations, while not exactly on point, provide support for this position. In a memo to then Mayor Jack Kirksey, dated September 18, 2001, in response to an inquiry as to whether Council Member Toy could use service credit from the period of time that she had opted out, former Human Resources Director Mary Rutan stated that the Retirement Ordinance would have to be amended. Relatedly, CSC Resolution #06-17, in addressing a question from another former City Council member after he was re-elected to City Council in 2007, resolved that the opt-out applies not to a specific "term" in the office but for any time served in the specific elected office. Noteworthy, that City Council Member had opted out of the defined benefit plan in 1996 and was therefore not permitted to participate in the defined contribution plan in 2007.

Additionally, former Human Resources Director Robert Biga specifically addressed the same issue being addressed in this letter, and determined, for many of the same reasons identified in this letter, that Council Member Toy was not eligible to participate in the defined contribution plan as a member of City Council.

Based on the above, it is my determination that a decision by a City Council Member to opt-out of the "Retirement System" as a City Council Member in 1987, prevents participation in the defined contribution system at a later date. The effect of the note Council Member Toy wrote on November 30, 1987, as stated in Section 2.96.160 of the Retirement Ordinance, is that Council Member Toy was no longer eligible for membership in the "Retirement System" while serving in the capacity of a City Council Member.

It remains possible that the retirement ordinance could be amended in a manner which would allow a salaried elected official who has opted out to reverse that election or otherwise participate in the retirement system at some future date. Whether such an amendment could apply retroactively is a question that would have to be addressed. Also, the City Council could approve a different benefit for employees who have opted out of the Retirement System. But re-entry into the "Retirement System" that Council Member Toy opted out of previously is not possible under the current Ordinance.

Please let me know if you have any questions or if you would like to further discuss this matter.

Very truly yours,

KELLER THOMA, P.C.

Gregory T. Schultz