**RESOLUTION**

**NO. R-22-85**

**CITY HALL: February 3, 2022**

**BY: COUNCILMEMBERS HARRIS, MORENO, MORRELL, KING, GREEN, AND THOMAS**

**WHEREAS,** in December 2012, the Orleans Parish Sheriff, United States Department of Justice, and a plaintiff class of individuals who were or would be detained at the Orleans Parish Prison entered a consent judgment (“Agreement”) in *Lashawn Jones, et al. v. Marlin Gusman, et al.* (the “Jail Litigation”), now pending in the United States District Court for the Eastern District of Louisiana (“Court”), to address unconstitutional conditions of the facility and care for inmates housed there; and

**WHEREAS,** in 2014, before the now opened Orleans Justice Center (“OJC”) was complete, the Sheriff proposed a 388-bed Phase III expansion, in part to properly house inmates with acute and sub-acute mental health needs and to add on-site facilities for mental health and medical needs; and

**WHEREAS,** as an alternative, the City of New Orleans – a third-party defendant responsible for funding the jail, which has ongoing interests in ensuring the well-being of all of its residents – advocated for renovating OJC, also known as Phase II; and

**WHEREAS,** the Mental Health Working Group formed by the Court to help parties reach compliance with the Agreement recommended Phase III instead of a retrofit of Phase II, largely because the Working Group assumed an average daily population at the jail between 1,400 and 2,100; and

**WHEREAS,** the Special Care Populations Working Group, formed outside of the Court, recommended renovating the fourth floor of OJC, given projected declines in the jail population and the shorter length of construction time, lower capital costs, and lower operational costs associated with retrofitting Phase II; and

**WHEREAS,** upon review, in 2017, Independent Compliance Director Gary Maynard submitted a Supplemental Compliance Action Plan to the Court, recommending construction of a scaled-back Phase III facility with only 89 beds and certain other features, mostly associated with medical and mental health treatment; and

**WHEREAS,** soon after, the City Council adopted Motion No. M-17-261 directing the City Planning Commission (“CPC”) to consider amending the conditional use which permits a prison and related uses at the site of OJC (Ordinance No. 24,282 M.C.S.) to allow for the construction of a new 89-bed Phase III facility; and

**WHEREAS,** this motion included a request for the CPC to study decommissioning 89 beds in Phase II at the same time; and

**WHEREAS,** because the CPC never received adequate plans, the agency was unable to study and recommend action on this zoning docket; and

**WHEREAS,** over time, due to a strong emphasis placed by the City on safely reducing the over-incarceration rate, the average daily population dropped substantially from 2,645 in late 2012 to 789 in 2021, an astounding 75 percent over the past ten years; and

**WHEREAS,** preliminary costs for building Phase III are projected at over $51 million, with an annual operating cost of over $8 million, while completing the retrofit is estimated to cost only $9 million, with no additional operational costs; and

**WHEREAS,** the retrofit proposed by the City and its experts would address the medical and mental health structural deficiencies of Phase II identified in the Agreement; and

**WHEREAS,** the Council has continued to voice unflagging support for the reduction of the jail population and an alternative to Phase III, such as its 2019 conditional use amendment that reduced the cap from 1,438 beds in OJC to a population of 1,250 across the entire jail complex and specifically incorporated language allowing for the possibility of a Phase II unit housing acute and sub-acute inmates; and

**WHEREAS,** the City and City Council went on to initiate two additional zoning dockets last year to consider further revising the OJC conditional use; and

**WHEREAS,** zoning docket 71/21, initiated by the City, provided for the construction of a new 89-bed Phase III facility, much like the zoning docket initiated in 2017; and

**WHEREAS,** zoning docket 99/21, initiated by the City Council, instead provided for a retrofit or adaptive reuse of Phase II to adequately house the OJC general population and inmates with acute and sub-acute mental health conditions, and to provide other components specified in Mr. Maynard’s 2017 Supplemental Compliance Action Plan; and

**WHEREAS,** since 2017, the Court has ordered the City to proceed with designing, constructing, and programming Phase III and has repeatedly denied the City’s requests to explore the alternate Phase II retrofit; and

**WHEREAS,** while the City and criminal justice stakeholders rightly underscore the practical and financial repercussions of Phase III – most notably that the facility itself will not ensure constitutional care for individuals housed there – principles of federalism require the City to abide by Court orders; and

**WHEREAS,** the existence of the Agreement itself poses cost burdens to the City, including funding the monitors’ oversight, and it is in the City’s interest to work toward its completion; and

**WHEREAS,** the ongoing delays to Phase III also threaten the loss of $36 million in FEMA funds currently proposed as a partial revenue source for completion of the facility; and

**WHEREAS,** it is evident that longstanding inequities and trauma are more effectively addressed by providing mental health and related supports than by expanding the criminal justice system, including jail facilities; and

**WHEREAS,** for all of these reasons, and because medical and mental health care at OJC are simply not yet constitutionally adequate; **NOW THEREFORE**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS,** That while the Council must honor repeated Court orders for the City to proceed with Phase III – even as this matter is currently on appeal with the Fifth Circuit Court of Appeals – this body will continue engaging in all legal processes to limit the jail structure and further the City’s goal of safely reducing the jail population in an equitable and fiscally responsible manner; and

**BE IT FURTHER RESOLVED,** That to ensure the Court and all parties to the Jail Litigation are apprised of the Council’s strong preference for the Phase II retrofit over a new Phase III facility, this body intends to submit – and does hereby instruct its Executive Counsel to file – an amicus brief to the Fifth Circuit prior to the start of oral arguments in March; and

**BE IT FURTHER RESOLVED,** That the Council, through its attorneys, will also submit a formal request for the United States Department of Justice, representing the United States’s interest in the Agreement, and the MacArthur Justice Center, representing the inmates’ interests, to reconsider a Phase II retrofit to address unconstitutional conditions of the facility and care for inmates housed there; and

**BE IT FURTHER RESOLVED, T**hat should the Court affirm the need to proceed with Phase III with due haste, the Council intends to take any and all steps necessary to formally decommission at least 89 beds in Phase II, to ensure there is no overall increase in population capacity at OJC; and

**BE IT FURTHER RESOLVED,** That the Council is committed to an ongoing dialogue with criminal justice stakeholders to identify any and all other legal steps to further its interest in this matter; and

**BE IT FURTHER RESOLVED,** That the Clerk of Council shall submit copies of this Resolution to Mayor LaToya Cantrell, the City Attorney, and the Criminal Justice Coordination Commissioner upon its approval.

**THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF, AND RESULTED AS FOLLOWS:
YEAS:
NAYS:
ABSENT:**
**AND THE RESOLUTION WAS ADOPTED.**