

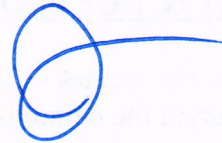
TOWN OF PALM BEACH

Information for Town Council Meeting on: April 3, 2023

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Director of Planning, Zoning & Building



Re: Oppose the "Resiliency and Safe Structures Act" - Current Language
Resolution No. 039-2023

Date: March 28, 2023

STAFF RECOMMENDATION

Consider adopting Resolution Number 039-2023 opposing the current version of the "Resiliency and Safe Structures Act" (HB 1317 & SB 1346), as this proposed State law would allow property owners of certain commercial and multi-family buildings, that are currently landmarked, to apply for demolition permits, if the buildings are nonconforming with FEMA. Please consider opposition to these bills as they continue to strip the Town of its Home Rule governance. These bills minimize the Town's architectural heritage. Several other preservation-minded Florida communities are opposing this flawed legislation. A few slides from the Miami Design Preservation League are attached, showing the bill's process and opposing governments and preservation agencies.

BILL SUMMARY

HB 1317 and SB 1346 create the "Resiliency and Safe Structures Act", providing that a local government may not prohibit, restrict, or prevent the demolition of the following commercial and multi-family structures for any reason, other than public safety:

- "Nonconforming structures" in coastal high-hazard areas which fail to meet Federal Emergency Management Agency standards for new construction;
- Any structure determined to be unsafe by a local building official; and
- Any structure ordered to be demolished by a local government that has proper jurisdiction.

The bill further prohibits local government from imposing certain limitations or conditions of approval for a replacement structure to be built on the property where a structure was demolished. The replacement structure must be permitted to be developed in accordance with all

applicable zoning codes and ordinances, provided that such zoning codes do not penalize or restrict development rights due to the demolition of any structure in accordance with the Act, including a limitation on the size or height of the replacement structure or a requirement for the replication of a demolished structure or maintenance of any of the structure's elements. An early change to the proposed bills was to have the new law not apply to structures listed in the National Register of Historic Places or single-family homes. But locally designated structures of this type of building are not exempted.

EFFECT OF PROPOSED CHANGES

The bill creates s. 553.8991, F.S., to provide that a local government may not prohibit, restrict, or prevent the demolition of the following structures for any reason, other than public safety:

- "Nonconforming structures" in coastal high-hazard areas which fail to meet FEMA standards for new construction;
- Any structure determined to be unsafe by a local building official; and
- Any structure ordered to be demolished by a local government that has proper jurisdiction.

The bill further prohibits a local government from imposing certain limitations or conditions of approval for a "replacement structure" to be built on the property where a structure was demolished. The replacement structure must be permitted to be developed in accordance with all applicable zoning codes and ordinances, provided that such zoning codes do not penalize or restrict development rights due to the demolition of any structure in accordance with the Act, including a limitation on the size or height of the replacement structure or a requirement for the replication of a demolished structure or maintenance of any of the structure's elements. Owners or developers of replacement structures are entitled to enjoy all land use, zoning, and other land development rights without regard to local government restrictions or penalties resulting from the demolition of a structure.

The bill defines:

- "Nonconforming structure" as a structure located in a coastal high-hazard area according to a Flood Insurance Rate Map issued by the FEMA which does not conform to the requirements for new construction issued by the National Flood Insurance Program; and
- "Replacement structure" as a new development that occurs on a property where a nonconforming structure in a coastal high-hazard area was located or where a structure has been ordered to be demolished, has been demolished, or has been deemed unsafe by the local building official.

The provisions of the bill do not apply to structures listed in the National Register of Historic Places or single-family homes, but does not exclude landmarked buildings.

Finally, the bill provides that a municipality, county, special district, or political subdivision may not adopt or apply a law, an ordinance, a rule, a regulation, a policy, a resolution, or any other act that in any way limits the demolition of structures and buildings to which the Act is

applicable or limits the development of a replacement structure in a way that would divest property owners or developers of land use, zoning, or other land development rights for demolishing a structure in accordance with the bill. All laws, ordinances, rules, regulations, policies, resolutions, and other acts of a municipality, county, special district, or political subdivision to the contrary are void.

CHANGES REQUESTED BY THE TOWN

Through the efforts of Town lobbyist Mat Forrest, The Town has requested that the bills exclude the Town of Palm Beach by adding that “any Certified Local Government (CLG)” would be exempt from this law. Unfortunately, that request was not well received.

Another possible exclusion for the Town was proposed by the Preservation Foundation of Palm Beach and is being proposed at this moment. This exclusion could be managed by simply adding “any locally designated historic structure” to proposed F.S. 553.8991(3) Qualifying Structures and Buildings. The requested / proposed text would read:

“553.8991

*(3) Qualifying Structures and Buildings. – This section applies to all of the following structures, unless the structure is individually listed in the National Register of Historic Places, **any locally designated historic structure**, or is a single-family home.”*

CLOSING THOUGHTS

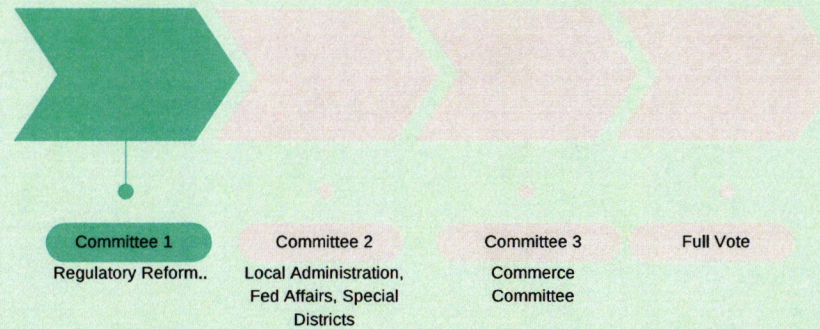
Staff encourages the Mayor and Town Council to oppose the proposed bills through the adoption of Resolution No. 039-2023. The reasons for opposition of the bills are three-fold:

1. The bills expand upon last years’ deleterious HB 423. Multi-family and commercial buildings are now included in the group of buildings that can be demolished by owners, even if landmarked, if noncompliant with FEMA elevations. These bills target buildings in the coastal high hazard areas (FEMA VE Zone). So with passage of this proposed law, an owner of any single-family home, not landmarked prior to January of 2022, located in the special flood hazard areas (AE or VE Zones) – AND - an owner of any multi-family or commercial buildings located in the VE Zone (hotels and condominium buildings), can apply for a demolition permit if their building is noncompliant with FEMA. The door is now “kicked open” to allow this list of buildings, and conditions, to evolve each year with future legislation; and
2. This type of law continues the march of the State stripping local communities of their Home Rule rights; and
3. The Town has 115 landmarks that are not single-family homes. Therefore, many of these landmark buildings and structures will fall under the new law. Other communities, like Miami Beach, have far more buildings than Palm Beach that will be impacted by this law. We should support the other Florida communities, that share our efforts and passion to preserve historic treasures and resources, in our collective efforts to oppose this type of

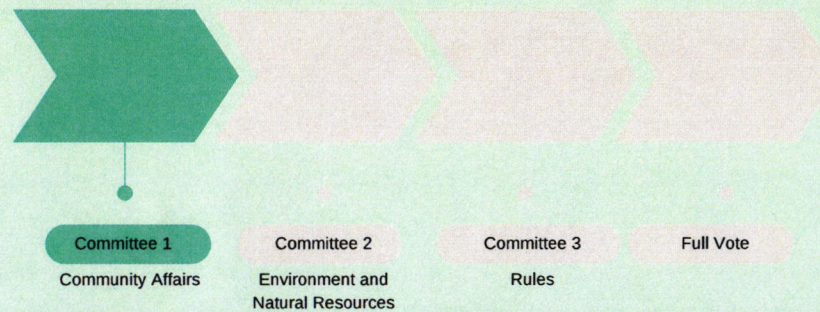
legislation. The Town's opposition of these bills will join with the other Florida communities to send a strong message to Tallahassee to stop adopting these flawed laws.

Bill Status

HB1317



SB1346



Outreach & Partnerships

As of Today, we have reached out to:

- Elected Representatives
 - State
 - County
 - Miami Beach
- Florida Trust for Historic Preservation
- National Trust for Historic Preservation
- Florida League of Cities
- Miami-Dade and Miami Beach lobbyists

The following groups have expressed concern/opposition to the bill:

- Miami-Dade County
- Florida League of Cities
- Miami Beach Historic Preservation Board
- Coral Gables Historic Preservation Board
- Town of Palm Beach
- City of Miami Beach ([resolution on March 27th Commission agenda](#))
- Dade Heritage Trust
- Florida Trust for Historic Preservation
- Miami Design Preservation League
- The Villagers
- The Historic Preservation Association of Coral Gables
- National Trust for Historic Preservation
- Preservation Foundation of Palm Beach
- - others? (please let me know, so I can add them to the list!)

1 A bill to be entitled
2 An act relating to local regulation of nonconforming
3 or unsafe structures; creating s. 553.8991, F.S.;
4 providing a short title; defining terms; providing
5 applicability; prohibiting local governments from
6 prohibiting, restricting, or preventing the demolition
7 of certain structures unless necessary for public
8 safety; requiring replacement structures to be
9 permitted to be developed in accordance with
10 applicable zoning codes and ordinances; providing an
11 exception; providing that owners and developers of
12 replacement structures are permitted to develop in
13 accordance with all land use, zoning, and other land
14 development rights; providing for retroactive
15 application; preempting regulation of the demolition
16 or replacement of certain structures to the state
17 under certain circumstances; providing an effective
18 date.

19
20 WHEREAS, it is of paramount importance to replace older,
21 unsafe, or nonconforming structures that are a threat to life
22 and safety with new, resilient buildings built to contemporary
23 building codes and standards, and

24 WHEREAS, nonconforming structures within coastal high-
25 hazard areas and structures ordered to be demolished or deemed

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26 unsafe by local building officials pose an increased risk of
27 collapse, may affect the integrity or stability of neighboring
28 buildings or structures, and may cause injury to persons or
29 property, and

30 WHEREAS, local governmental laws, procedures, and policies
31 that prohibit or limit the demolition of nonconforming or unsafe
32 structures or limit the construction of new resilient structures
33 pose a threat to life and public safety, and

34 WHEREAS, on properties where there is a nonconforming
35 structure within a coastal high-hazard area, a structure that
36 has been deemed unsafe by a local building official, or a
37 structure that is subject to a demolition order, such structure
38 must be authorized to be demolished and any replacement
39 structure authorized which allows owners or developers to enjoy
40 all land use and development rights that would apply to the
41 property without regard to any local restrictions that may
42 restrict future development at the subject property as a result
43 of the local building official's order or demolition, and

44 WHEREAS, to make the application and enforcement of this
45 act uniform throughout this state, the Legislature intends to
46 preempt the regulation of the demolition of certain structures
47 and buildings to the state, NOW, THEREFORE,

48
49 Be It Enacted by the Legislature of the State of Florida:
50

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Section 1. Section 553.8991, Florida Statutes, is created to read:

553.8991 Resiliency and Safe Structures Act.—

(1) SHORT TITLE.—This section may be cited as the "Resiliency and Safe Structures Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Nonconforming structure" means a structure located in a coastal high-hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA) which does not conform to the requirements for new construction issued by the National Flood Insurance Program.

(b) "Replacement structure" means a new structure built on a property where a structure was demolished or will be demolished in accordance with this section.

(3) QUALIFYING STRUCTURES AND BUILDINGS.—This section applies to all of the following structures, unless the structure is individually listed in the National Register of Historic Places or is a single-family home:

(a) Nonconforming structures in coastal high-hazard areas which fail to meet FEMA standards for new construction.

(b) Any structure determined to be unsafe by a local building official.

(c) Any structure ordered to be demolished by a local government that has proper jurisdiction.

(4) RESTRICTIONS ON DEMOLITION PROHIBITED.—A local

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government may not prohibit, restrict, or prevent the demolition of any structure identified in subsection (3) for any reason, other than public safety.

(5) RESTRICTIONS ON REDEVELOPMENT PROHIBITED.—A replacement structure must be permitted to be developed in accordance with all applicable zoning codes and ordinances, provided that the zoning codes and ordinances do not in any way penalize or restrict development rights due or related to the demolition of any structure in accordance with this section, including a requirement for replication of the demolished structure, a limitation on the size or height of the replacement structure, or the maintenance of any of the elements of the demolished structure. Owners or developers of replacement structures are permitted to develop in accordance with all land use, zoning, and other land development rights, whether established by law, ordinance, rule, regulation, policy, development order, or any other act, without regard to any local government restrictions or penalties resulting from the demolition of any structure identified in subsection (3) that may restrict development of a replacement structure as a result of a local government order, a designation, a code enforcement proceeding, or an ordinance.

(6) APPLICATION.—This section applies prospectively and retroactively to any law adopted contrary to this section and its intent.

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101 (7) PREEMPTION.—A municipality, county, special district,
102 or political subdivision may not adopt or apply a law, an
103 ordinance, a rule, a regulation, a policy, a resolution, or any
104 other act that in any way limits the demolition of any
105 structures and buildings identified in subsection (3) or limits
106 the development of any replacement structure in a way that would
107 divest property owners or developers of land use, zoning, or
108 other land development rights for the demolition of any
109 structure in accordance with this section. All laws, ordinances,
110 rules, regulations, policies, resolutions, and other acts of a
111 municipality, county, special district, or political subdivision
112 to the contrary are void.

113 Section 2. This act shall take effect upon becoming a law.