



SONHawai'i

"OMNIBUS" IMPACT ON CONDOMINIUMS AND APARTMENTS

Mayor Caldwell and the Department of Planning and Permitting (DPP) have proposed a new "Omnibus" permitting and property tax increase scheme for Transient Vacation Units (TVU) and Bed & Breakfast homes (B&B) in all apartment (A-1, A-2, A-3), apartment mixed use (AMX-1, AMX-2, AMX-3), Resort, and business mixed use (BMX-3, BMX-4).

In the same Omnibus proposal, they will permit only B&Bs (**no TVUs**) in residential (R-3.5 through R-20) zoning.

If passed, this Omnibus bill will have a profound impact on condominium and apartment residents, managers, boards of directors, and managing agents.

Before proceeding further, let's get the terminology straight.

- LTR - Long-term rentals of 30 days or more are legal under Honolulu law in all apartment, residential, and mixed-use zoning categories and are not part of this discussion.
- STR – Short-term rental of less than 30 days.
- TVU – Transient Vacation Unit defined by the C&C Honolulu law as a non-hosted (owner, lessee, operator or proprietor not present) STR
- B&B – Bed and Breakfast Home defined the C&C Honolulu law as a hosted (owner, lessee, operator or proprietor occupied) STR
- CPR – (previously HPR) Condominium Property Regime – the legal documents that describe and define the condominium project.
- HCDA – Hawaii Community Development Authority

Why is the mayor targeting TVUs for apartment, AMX, and BMX zoning only and not in residential (R) zoning?

Because over the past 15 years, Honolulu councils and mayors have repeatedly attempted to establish a permitting system for TVUs and B&Bs in residential (R) zoning, only to be defeated after exhausting battles due to overwhelming opposition from single-family homeowners in

residential (R) zoning. Apartment residents were not so vocal and well-organized and were generally not present during those battles.

The mayor and DPP now **state** that they think TVUs will have less impact in apartments than in single-family homes, so they should be okay. The **real reason** they are going after apartments instead of houses is that they expect history to repeat itself and apartment residents will not effectively organize to oppose them at the Honolulu City Council and then the City government will benefit from the associated property tax increases.

Why should I be concerned, my condominium project is family-oriented and not a luxury condo? Tourists would rather stay in a luxury condo near the ocean.

Websites such as airdna.com show that illegal STRs are already showing up in increasing numbers in all sorts of condominium projects in all areas of O'ahu serving guests of all price ranges. The mayor's Omnibus proposal will not exempt any Apartment-zoned condominium projects regardless of luxury or location

What if our CPR or by-laws DO NOT forbid short-term rentals (STR)?

Those condominiums that have previously relied on the threat of City law or enforcement will have the rug pulled out from under them. All that will be required of an apartment owner, operator or proprietor to get a TVU or B&B permit will be to show that the CPR or bylaws do not forbid STRs.

There is legitimate fear that AOAOs which do not forbid STRs prior to the Omnibus law taking effect will not be able to forbid B&Bs and TVUs after it takes effect, which would then amount to a "taking" of a fundamental apartment owner's right then subject the AOAO to legal challenge and possible penalties.

What if our CPR or by-laws DO forbid STRs, will the City issue permits?

Not according to the Omnibus as currently written, but that's not the end of the story. There will then be a strong push to change the by-laws or CPR by non-resident owners that wish to double or triple their income from their rental property. Boards of Directors, owners, renters, site managers and managing agents will be drawn into expensive disputes and ownership votes to change the by-laws or CPR.

What if my next-door neighbor applies for a B&B or TVU permit and Conditional Use Permit (CUP), won't I be notified and have the opportunity to oppose it or organize other neighbors on our floor against it?

There is no requirement for the applicant or DPP to inform you of the application or the process. There is no public hearing or opportunity to oppose it. You will learn that your neighbor has a B&B or TVU by the number of strangers coming and going.

Will the B&B and TVU vacationers have free roam and use of our condominium project, its facilities, its common areas?

Absolutely yes. The resident manager and permanent residents will be faced with making sure that vacationers behave and obey the house rules and by-laws.

Will the permitting of B&Bs and TVUs affect the nature of our condo project community? How?

It will become more like a hotel, with a constant stream of overnight strangers. There will be lost keys, parking stall incursions, partying, noise in the hallways and common areas, strangers asking directions to common area features, damage to common area features. Vacationers will not have the same respect for your home as the permanent residents.

Can our AOA vet or deny access of B&B/TVU guests that we don't want in our building?

No. You won't even know who they are until they arrive. Federal and state laws forbid the B&B/TVU operator from even asking many questions.

According to the Hawaii State Attorney General, Registered Sex Offenders are NOT REQUIRED to identify themselves to B&B/TVU operators or the condo management if their stay is ten days or less.

Do TVUs and B&Bs attract more crime?

Yes, according to the Honolulu Police Department. "They're perfect for the criminal," said Honolulu Police Department Detective John McCarthy in a KITV interview. "They're here on vacation; they let their guard down. They have valuables. What more can a crook ask for?"

Crime will be much more an issue in lower-security low-rise condominium projects than in high-security high-rises.

If apartments in our condo project get B&B permits, who will ensure that the required **owner, lessee, operator or proprietor** occupant is actually present when guests are present?

The City will not know unless neighbors or management turn them in. The City only responds to complaints and then are rarely able to take effective action, as our 28-year history has shown. Remember, there will be no limit or quota on the number and location of condominium B&Bs.

Will our AOA be able to charge the B&B or TVU owner or their guests fees for guests' use of common element features such as BBQ, theatre, gym?

Not unless all users, including permanent residents, pay the same usage fees.

Will our AOA be able to raise maintenance fees on B&B or TVU permitted apartments?

Not likely allowed unless the CPR is changed and legal challenges overcome.

What if I live next door to a B&B or TVU or there are several on my floor or in my building, will that affect my property value or property taxes?

If you decide to sell your apartment, you will be forced to disclose their existence to any prospective buyer. That disclosure will likely reduce the resale value of your apartment but will not reduce your property tax valuation or property tax rate. This is already playing out in residential (R) zoned neighborhoods

But our condo is in the HCDA or has deed restrictions or covenants, won't that protect us?

If your condominium is within HCDA jurisdiction, your CPR may have language forbidding STRs, which could prevent B&B and TVU permitting. If your CPR or bylaws do not expressly forbid STRs, the DPP will not be able to refuse to issue the B&B or TVU permits, even if HCDA rules forbid.

Deed restrictions or covenants forbidding STRs are not listed in the Omnibus as justification for the DPP to refuse a permit. Deed restrictions or covenants are only enforced through expensive civil action in the courts.

What can I do if I oppose opening up all apartment and AMX and BMX zoning to TVUs and B&Bs?

Submit written testimony (info@honoluludopp.org) then attend and testify in-person at the the Honolulu Planning Commission hearing September 5, 2018 1:30 at the Mission Memorial Auditorium, 550 S. King Street. In the meantime, stay tuned to www.sonhawaii.org for updates and strategy going into the September 5 hearing.

What else can be done at this time to turn back all the STR pressure on housing prices, rents, homelessness and the compromising of our residential neighborhoods?

Four other proposals will be heard at the same Honolulu Planning Commission September 5 hearing, two that will help save neighborhoods ([Resolution 17-52 CD-1](#) and the intent of [Resolution 17-164](#)) and two other permitting proposals that will destroy O'ahu's residential and apartment zoned Neighborhoods ([Resolution 17-163](#) and [Resolution 17-301](#)). You can help by submitting testimony and testifying FOR 17-52 and 17-164 and AGAINST 17-163 and 17-301.