

Take a Little Piece of My Paradise, If It Makes You Feel Good: The Sharing Economy in Aesthetically Pleasing Locales

"Well you know you got it, if it makes you feel good."

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A Little Piece of My Heart, Big Brother & the Holding Company (J. Joplin Lead Vocalist), Released August 1968, Columbia Records

With romance, mysteries abound as to when "you got it" so that "it makes you feel good." With real estate, "you know you got it" with the intersection of a property's highest and best use, "location, location, location," and its aesthetic appeal—often found at vacation venues. Yet, like romances, vacation rentals can pose difficult and sometimes painful complications while proving extremely rewarding.

Many landlords with real estate in vacation areas can create or increase revenues by converting long-term rentals to short-term rentals ("STRs"). STR guests usually pay more per diem than long-term tenants. Internet sites such as HomeAway.com, VRBO.com, AirBnB.com and FlipKey.com, have expanded this potential market. But, before opting for a vacation STR, property owners should consider requirements, restrictions and risks unique to vacation STRs. See "Vacation Sharing Economy" chart below.

Government Regulation of STRs: Landlords should review their STR laws to assess local county, city or municipal regulations. (Selection listed by AirBnB at <https://www.airbnb.com/help/responsible-hosting>.) The Tables appended hereto are culled from the article, R Street Policy Study: Roomscore 2016: Short-Term Rental Regulation in U.S. Cities (March 16, 2016) and provide a national overview of STR laws.

Municipal laws ("STR laws") vary significantly across states, and may include:

- Minimum rental periods. Some municipalities impose minimum rental time periods (e.g., one-month or one-week tenancies) e.g., Santa Monica prohibits STR less than

30 days. See <http://www.smgov.net/Departments/PCD/Permits/Short-Term-Rental-Home-Share-Ordinance/> (allowing "home sharing" if a primary resident is on site throughout the visitor's stay). "Durational limitations" are fairly broad for STRs and can be viewed in several different ways. For example, a city may set the number of days in which hosts can rent their residences to guests. San Francisco Admin. Code § 41A.5(g)(1)(A) (2016). Or, a city can set the minimum number of days and nights that a host can rent out the residence. Palm Desert, CA, Mun. Code § 5.10.070(B) (2012).

- Registration and Licensing. Many municipalities require landlords to obtain business licenses or other special licenses to operate short-term vacation rentals.
 - San Francisco requires a short-term rental permit. See <http://sf-planning.org/office-short-term-rental-registry-faqs>.
 - Palm Springs requires a transient occupancy registration permit and a vacation rental certificate. See <http://www.palmspringsca.gov/government/departments/finance-treasury/vacation-rentals>.
 - San Luis Obispo ("SLO") requires a Residential Vacation Rental permit for < 30-day rentals. <http://www.slocounty.ca.gov/Assets/PL/pdfs/Vacation+Rental+Users+Guide.pdf>.
 - In Savannah, Georgia, applicants are required to fill out a "Business Approval Application" that must be accepted before the home can be considered an STR. Savannah Short-Term Vacation Rentals, <http://www.savannahga.gov/DocumentCenter/View/4697>.

If approved, the host will receive an annually-renewable rental certificate. Id.

- While Palm Desert and Savannah impose reasonable registration processes, the system in New Orleans, Louisiana, has encouraged illegal STRs. New Orleans' STR regulations "cover any location renting rooms for 60 days or less in the French Quarter, or 30 days or less outside of the French Quarter." Short Term Rentals, City of New Orleans, <http://www.nola.gov/short-term-rentals/>. Also, New Orleans only allows B&B's and hotels/motels to apply for STR permits. Bed & Breakfast License, City Of New Orleans, <http://www.nola.gov/onestop/business/bed-and-breakfast/bed-breakfast-license/>.
- Transient Occupancy Taxes (TOT). Most municipalities impose transient occupancy taxes on STRs of 30 days or less. For information on TOT for a specific locale, Google "transient occupancy taxes" and the name of the county, city or municipality, since TOT may be assessed by cities or other municipalities and sometimes by counties.
- Zoning ordinances. Cities often limit vacation STRs to specific geographic areas, as well as:
 - prohibit vacation rentals of less than 30 days if located in close proximity to other vacation STRs in some areas of the county, e.g., SLO M.C. § 23.08.165(c), <http://www.slocounty.ca.gov/Assets/PL/pdfs/Vacation+Rental+Users+Guide.pdf>.; or
 - impose a maximum number of vacation rental days SLO M.C. § 23.08.165(d), Id.; or
 - STR occupants, e.g., 2 persons per bedroom plus 2, see SLO M.C. 23.08.165(e); or
 - multi-regulatory STR schemes, such as in San Jose, CA, which imposes a maximum number of guests, record keeping requirements, a 180-day limit on renting a home when the owner is not present, and requires the host to designate a local contact for complaints.

https://www2.municode.com/library/ca/san_jose/codes/code_of_ordinances?nodid=TIT20ZO_CH20.80SPUSRE_PT2.5TROCINUSRE.

Covenants, Conditions, and Restrictions (CC&Rs) and Homeowners Associations (HOAs): Property owners who are governed by an HOA must assess the CC&Rs and other rules. An owner or her counsel should review both the

CC&Rs and rules and regulations to identify constraints on STRs. Some HOAs prohibit rentals for less than 30 days or require the owner to provide tenant information to the HOA management company, or pay special assessments or fees to permit an STR. To avoid conflict with neighbors and the HOA, vacationers should receive a copy of the HOA rules and regulations, and agree that noncompliance can result in fines and other expenses being passed through from the owner to guest.

Other Factors: Vacationers—whether singles, couples or even families—just want to "have fun," so they may be less likely to treat the property and community members with due care, resulting in property damage and conflict with neighbors. Headaches occasioned by vacationers can be reduced through careful screening, while educating and communicating with vacationers about property-specific issues and concerns (e.g., quiet hours, parking restrictions, trash can rules, and emphasizing that guests should be respectful of neighbors). Moreover, more STR use of properties increases the problem of bed bugs and other pests that can be costly to exterminate. Tenants often deny accountability, and refuse to, or simply cannot afford to pay damages.

STR Agreements: California law differs for leases exceeding 30 days ("standard rentals") and terms of 30 days or less, i.e., an STR. Cal. Civ. Code § 1940. Many California laws that protect standard rental tenants do not apply to STRs. Cal. Civ. Code §§ 1940-1954.1. A standard rental agreement may reference laws not applicable to STRs, and grant rights not available to STR tenants so an STR Agreement typically:

- covers multiple payments before the tenant takes possession (and vacation tenants typically make an initial deposit, then pay the balance due before taking possession);
- addresses other issues unique to vacation rentals, such as:
 - check-in and check-out times,
 - remedies if a tenant is several hours late in checking out (causing a problem for the next occupant to take possession),
 - specifies the nonrefundable cleaning charge (not allowed in a standard rental agreement),
 - lists furnishings,
 - addresses transient occupancy taxes, or
 - cancellation policies.

Conclusion: An STR landlord should assess and comply with STR laws and HOA requirements and restrictions. Vacation

STR owners should also proactively prevent vacation rental problems, and use a concise but clearly drafted STR Agreement.

This article first appeared in Westlaw's publication entitled Sharing Economy. The publication is part of the Emerging Areas of Practice Series – a new publishing initiative which reduces product to market time to cover emerging areas of the law as they develop. New documents are loaded to Westlaw on a rolling basis as received and content is updated quarterly.

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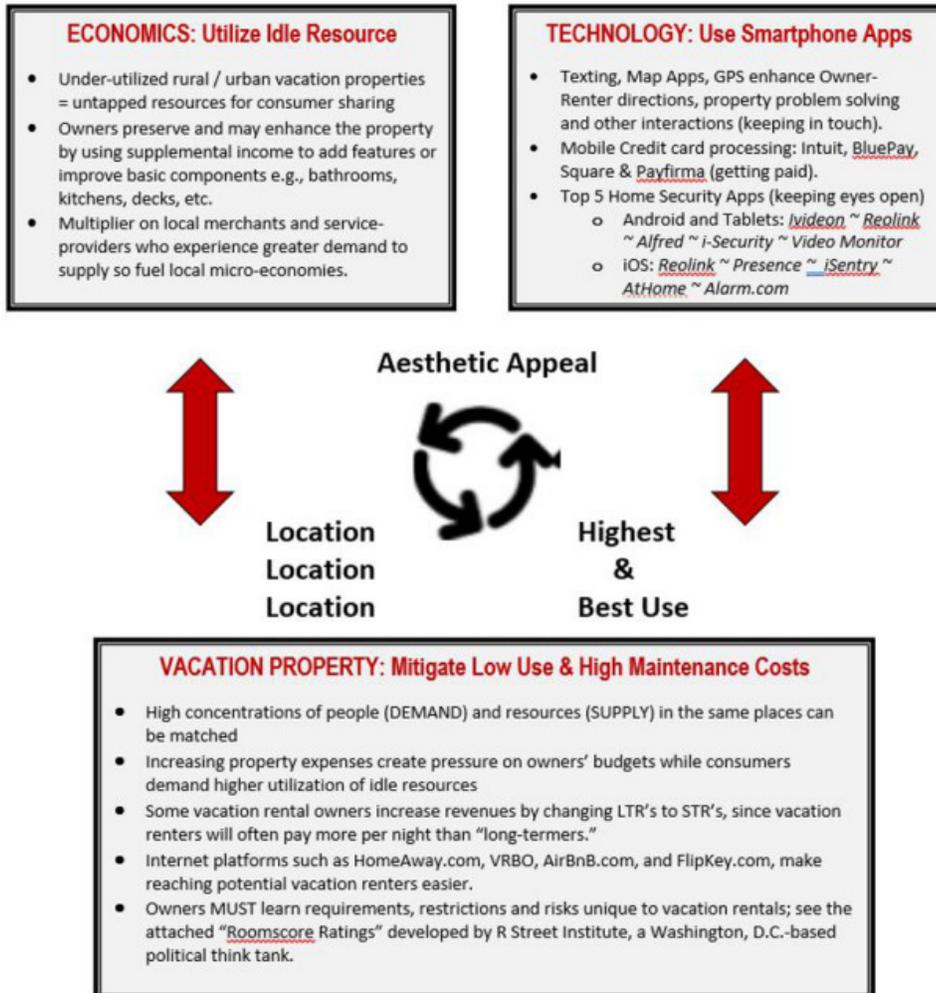


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VACATION SHARING ECONOMY



Moylan, A., R Street Policy Study: *Roomscore 2016: Short-Term Rental Regulation in U.S. Cities* (March 16, 2016)*

A 2016 study from R Street Institute, a Washington, D.C.-based political think tank, examined STR laws, legal findings and media reports from June 2015 to Spring 2016 in the 59 largest U.S. cities to assess their openness to STRs. The scores were based on their STR legal frameworks, restrictions, tax collections, licensing requirements and hostile enforcement actions. Each city started with a score of 90 and points were added or subtracted based on results from each category. Some 38 of the 59 cities have no legal framework in place for STRs or vacation rentals: 21 received points for having a framework, 14 received the full additional 10 points if their laws specifically referenced STRs (see Tables 1-6, below, which are drawn from the R Street Institute study).

Though the frameworks of these 21 cities weren't all ideal for STRs as only four of them received "A" letter grades (the best scores) and only 15 cities overall received some form of an "A" (see Table 5). Some 32 of the 59 cities have restrictions and 28 lost points for "hostile" measures to enforce restrictions. The Tables below outline where cities won and lost points in the analysis and Table 6 tallies the results.

Table 1: Austin, Texas; San Francisco, Philadelphia, Nashville, Tennessee and Savannah, Georgia have some of the most robust frameworks and laws that create legal foundations for STRs. Cities with STR legal frameworks were eligible to receive up to 10 additional points, and frameworks only accommodating vacation rentals received a smaller number of points. Cities that received fewer than 10 points don't acknowledge arrangements of single bedroom rentals in an apartment or home.

Table 2: Cities such as Atlanta, Denver and New Orleans are among the most STR restrictive in the U.S. A city lost up to 40 points depending on the severity of its legal restrictions.

Table 3: The study analyzed how many licensing requirements a city imposes over a five-year period. It considered how many licenses or filings a property owner must submit within five years and the total cost of any regulatory fees and assessments. Based on the severity of licensing burdens, cities received deductions of up to 10 points. For cities with minimal licensing requirements, such as a single inexpensive filing, no points were deducted. Las Vegas and Fort Lauderdale, for example, have some of the country's most burdensome short-term licensing requirements.

Table 4: This Table assessed the cities' enforcement regime for STR restrictions, including restrictions that did not fit into the prior categories, such as burdensome inspection regimes, disproportionately high insurance requirements, restrictive occupancy limits, mandates to provide vehicle parking spaces and prescriptive regulation of a host's location and/or accessibility. Cities lost up to 10 points based on the severity of such rules – Anaheim, Fort Lauderdale and San Francisco all lost 10 points here.

Table 5: For final scores (including corresponding letter grades), 10 cities had "F's," 15 "D's," and 5 "C's." Cities like Dallas, Indianapolis, San Diego and Savannah, earned "A's." The total average for cities in the study, however, is a 74.7. No clear trends emerged vis-à-vis conservative versus liberal cities, or whether cities were more or less dependent on tourism revenue.

*<https://2o9ub0417ch2lg6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2018/04/RSTREET55-1.pdf>. [Cf. R Street website for more detailed description of the Roomscore Methodology, as well as a comprehensive compendium of articles and information on STRs in the "Sharing Economy."]

TABLE 1: LEGAL FRAMEWORK (0 TO +10)

CITY	POINTS	CITY	POINTS	CITY	POINTS
Albuquerque, N.M.	0	Fresno, Calif.	0	Oakland, Calif.	+3
Atlanta	0	Galveston, Texas	+10	Oklahoma City	0
Asheville, N.C.	+5	Houston	0	Omaha, Neb.	0
Anaheim, Calif.	+10	Indianapolis	0	Orlando, Fla.	0
Austin, Texas	+10	Jackson Hole, Wyo.	0	Philadelphia	+10
Baltimore	0	Jacksonville, Fla.	0	Phoenix	0
Boston	0	Kansas City, Mo.	0	Portland, Ore.	+10
Boulder, Colo.	+10	Las Vegas	+3	Raleigh, N.C.	0
Charleston, S.C.	+5	Long Beach, Calif.	0	Sacramento, Calif.	+10
Charlotte, N.C.	0	Los Angeles	0	San Antonio	0
Chicago	+3	Louisville, Ky.	+10	San Diego	+5
Cleveland	0	Mauai County, Hawaii	+10	San Francisco	+10
Colorado Springs, Colo.	0	Memphis, Tenn.	0	San Jose, Calif.	+10
Columbus, Ohio	0	Mesa, Ariz.	0	Santa Barbara, Calif.	0
Dallas	0	Miami	0	Savannah, Ga.	+10
Denver	0	Milwaukee	0	Seattle	+5
Detroit	0	Minneapolis	0	Tucson, Ariz.	0
El Paso, Texas	0	Nashville, Tenn.	+10	Virginia Beach, Va.	0
Fort Lauderdale, Fla.	+10	New Orleans	0	Washington	0
Fort Worth	0	New York	0	AVERAGE	+2.9

TABLE 2: LEGAL RESTRICTIONS
(0 TO -40)

CITY	POINTS	CITY	POINTS	CITY	POINTS
Albuquerque, N.M.	0	Fresno, Calif.	-35	Oakland, Calif.	0
Atlanta	-40	Galveston, Texas	0	Oklahoma City	-40
Asheville, N.C.	-25	Houston	-20	Omaha, Neb.	0
Anaheim, Calif.	0	Indianapolis	0	Orlando, Fla.	0
Austin, Texas	-25	Jackson Hole, Wyo.	-30	Philadelphia	-10
Baltimore	-25	Jacksonville, Fla.	-35	Phoenix	0
Boston	-15	Kansas City, Mo.	-35	Portland, Ore.	-20
Boulder, Colo.	-30	Las Vegas	0	Raleigh, N.C.	-30
Charleston, S.C.	-25	Long Beach, Calif.	-15	Sacramento, Calif.	-25
Charlotte, N.C.	0	Los Angeles	-35	San Antonio	0
Chicago	-10	Louisville, Ky.	0	San Diego	0
Cleveland	0	Maui County, Hawaii	-15	San Francisco	-10
Colorado Springs, CO	0	Memphis, Tenn.	-25	San Jose, Calif.	-10
Columbus, Ohio	0	Mesa, Ariz.	0	Santa Barbara, Calif.	-35
Dallas	0	Miami	-20	Savannah, Ga.	0
Denver	-40	Milwaukee	0	Seattle	0
Detroit	0	Minneapolis	0	Tucson, Ariz.	0
El Paso, Texas	0	Nashville, Tenn.	-10	Virginia Beach, Va.	0
Fort Lauderdale, Fla.	0	New Orleans	-35	Washington	-10
Fort Worth	-30	New York	-20	AVERAGE	-13.3

TABLE 3: TAX COLLECTION
(0 TO -5)

CITY	POINTS	CITY	POINTS	CITY	POINTS
Albuquerque, N.M.	0	Fresno, Calif.	0	Oakland, Calif.	-5
Atlanta	0	Galveston, Texas	-2	Oklahoma City	0
Asheville, N.C.	0	Houston	0	Omaha, Neb.	0
Anaheim, Calif.	0	Indianapolis	0	Orlando, Fla.	-2
Austin, Texas	0	Jackson Hole, Wyo.	0	Philadelphia	0
Baltimore	0	Jacksonville, Fla.	0	Phoenix	0
Boston	0	Kansas City, Mo.	0	Portland, Ore.	-5
Boulder, Colo.	0	Las Vegas	0	Raleigh, N.C.	0
Charleston, S.C.	0	Long Beach, Calif.	0	Sacramento, Calif.	0
Charlotte, N.C.	0	Los Angeles	0	San Antonio	0
Chicago	0	Louisville, Ky.	0	San Diego	0
Cleveland	0	Maui County, Hawaii	0	San Francisco	-5
Colorado Springs, CO	0	Memphis, Tenn.	0	San Jose, Calif.	0
Columbus, Ohio	0	Mesa, Ariz.	0	Santa Barbara, Calif.	0
Dallas	0	Miami	0	Savannah, Ga.	0
Denver	0	Milwaukee	0	Seattle	0
Detroit	0	Minneapolis	0	Tucson, Ariz.	0
El Paso, Texas	0	Nashville, Tenn.	0	Virginia Beach, Va.	0
Fort Lauderdale, Fla.	0	New Orleans	0	Washington	0
Fort Worth	0	New York	0	AVERAGE	-0.3

TABLE 4: LICENSING REQUIREMENTS

(0 TO -10)

CITY	POINTS	CITY	POINTS	CITY	POINTS
Albuquerque, N.M.	-2	Fresno, Calif.	0	Oakland, Calif.	-8
Atlanta	0	Galveston, Texas	0	Oklahoma City	0
Asheville, N.C.	0	Houston	0	Omaha, Neb.	0
Anaheim, Calif.	-5	Indianapolis	0	Orlando, Fla.	-4
Austin, Texas	-7	Jackson Hole, Wyo.	0	Philadelphia	-5
Baltimore	0	Jacksonville, Fla.	0	Phoenix	0
Boston	-7	Kansas City, Mo.	0	Portland, Ore.	-4
Boulder, Colo.	-1	Las Vegas	-10	Raleigh, N.C.	0
Charleston, S.C.	0	Long Beach, Calif.	-9	Sacramento, Calif.	-1
Charlotte, N.C.	0	Los Angeles	0	San Antonio	0
Chicago	-5	Louisville, Ky.	0	San Diego	-3
Cleveland	0	Mauí County, Hawaii	-5	San Francisco	-7
Colorado Springs, CO	-5	Memphis, Tenn.	0	San Jose, Calif.	0
Columbus, Ohio	0	Mesa, Ariz.	0	Santa Barbara, Calif.	0
Dallas	0	Miami	-2	Savannah, Ga.	-2
Denver	0	Milwaukee	0	Seattle	-5
Detroit	0	Minneapolis	0	Tucson, Ariz.	-5
El Paso, Texas	0	Nashville, Tenn.	-3	Virginia Beach, Va.	-4
Fort Lauderdale, FL	-10	New Orleans	0	Washington	-1
Fort Worth	-2	New York	0	AVERAGE	-2.0

TABLE 5: HOSTILE ENFORCEMENT

(0 TO -10)

CITY	POINTS	CITY	POINTS	CITY	POINTS
Albuquerque, N.M.	-1	Fresno, Calif.	-1	Oakland, Calif.	0
Atlanta	0	Galveston, Texas	-1	Oklahoma City	0
Asheville, N.C.	-7	Houston	-5	Omaha, Neb.	0
Anaheim, Calif.	-10	Indianapolis	0	Orlando, Fla.	0
Austin, Texas	-5	Jackson Hole, Wyo.	0	Philadelphia	-5
Baltimore	-5	Jacksonville, Fla.	0	Phoenix	0
Boston	-6	Kansas City, Mo.	0	Portland, Ore.	-3
Boulder, Colo.	0	Las Vegas	-10	Raleigh, N.C.	0
Charleston, S.C.	0	Long Beach, Calif.	-3	Sacramento, Calif.	-5
Charlotte, N.C.	-3	Los Angeles	0	San Antonio	0
Chicago	-8	Louisville, Ky.	-7	San Diego	0
Cleveland	0	Mauí County, Hawaii	-10	San Francisco	-10
Colorado Springs, Colo.	-1	Memphis, Tenn.	0	San Jose, Calif.	-5
Columbus, Ohio	0	Mesa, Ariz.	0	Santa Barbara, Calif.	0
Dallas	0	Miami	0	Savannah, Ga.	-1
Denver	0	Milwaukee	0	Seattle	-3
Detroit	0	Minneapolis	-5	Tucson, Ariz.	0
El Paso, Texas	0	Nashville, Tenn.	-5	Virginia Beach, Va.	0
Fort Lauderdale, Fla.	-10	New Orleans	0	Washington	-5
Fort Worth	0	New York	-8	AVERAGE	-2.5

TABLE 6: ROOMSCORE RESULTS

CITY	FRAMEWORK	RESTRICTIONS	TAX	LICENSING	ENFORCEMENT	TOTAL	GRADE
Albuquerque, N.M.	0	0	0	-2	-1	87	B+
Atlanta	0	-40	0	0	0	50	F
Asheville, N.C.	+5	-25	0	0	-7	63	D
Anaheim, Calif.	+10	0	0	-5	-10	85	B
Austin, Texas	+10	-25	0	-7	-5	63	D
Baltimore	0	-25	0	0	-5	60	D-
Boston	0	-15	0	-7	-6	62	D-
Boulder, Colo.	+10	-30	0	-1	0	69	D+
Charleston, S.C.	+5	-25	0	0	0	70	C-
Charlotte, N.C.	0	0	0	0	-3	87	B+
Chicago	+3	-10	0	-5	-8	70	C-
Cleveland	0	0	0	0	0	90	A-
Colo. Springs, CO	0	0	0	-5	-1	84	B
Columbus, Ohio	0	0	0	0	0	90	A-
Dallas	0	0	0	0	0	90	A-
Denver	0	-40	0	0	0	50	F
Detroit	0	0	0	0	0	90	A-
El Paso, Texas	0	0	0	0	0	90	A-
Ft Lauderdale, FL	+10	0	0	-10	-10	80	B-
Fort Worth	0	-30	0	-2	0	58	F
Fresno, CA	0	-35	0	0	-1	54	F
Galveston, TX	+10	0	-2	0	-1	97	A+
Houston	0	-20	0	0	-5	65	D
Indianapolis	0	0	0	0	0	90	A-
Jackson Hole, WY	0	-30	0	0	0	60	D-
Jacksonville, Fla.	0	-35	0	0	0	55	F
Kansas City, Mo.	0	-35	0	0	0	55	F
Las Vegas	+3	0	0	-10	-10	73	C
Long Beach, CA	0	-15	0	-9	-3	63	D
Los Angeles	0	-35	0	0	0	55	F
Louisville, KY	+10	0	0	0	-7	93	A
Maui County, HI	+10	-15	0	-5	-10	70	C-
Memphis, Tenn.	0	-25	0	0	0	65	D
Mesa, AZ	0	0	0	0	0	90	A-
Miami	0	-20	0	-2	0	68	D+
Milwaukee	0	0	0	0	0	90	A-
Minneapolis	0	0	0	0	-5	85	B
Nashville, Tenn.	+10	-10	0	-3	-5	82	B-
New Orleans	0	-35	0	0	0	55	F
New York	0	-20	0	0	-8	62	D-
Oakland, CA	+3	0	-5	-8	0	80	B-
Oklahoma City	0	-40	0	0	0	50	F
Omaha, NE.	0	0	0	0	0	90	A-
Orlando, FL	0	0	-2	-4	0	84	B
Philadelphia	+10	-10	0	-5	-5	80	B-
Phoenix	0	0	0	0	0	90	A-
Portland, OR	+10	-20	-5	-4	-3	68	D+
Raleigh, N.C.	0	-30	0	0	0	60	D-
Sacramento, CA	+10	-25	0	-1	-5	69	D+
San Antonio	0	0	0	0	0	90	A-
San Diego, CA	+5	0	0	-3	0	92	A-
San Francisco	+10	-10	-5	-7	-10	68	D+
San Jose, CA	+10	-10	0	0	-5	85	B
Santa Barbara, CA	0	-35	0	0	0	55	F
Savannah, GA	+10	0	0	-2	-1	97	A+
Seattle	+5	0	0	-5	-3	87	B+
Tucson, AZ	0	0	0	-5	0	85	B
Virginia Bch, VA	0	0	0	-4	0	86	B
Washington	0	-10	0	-1	-5	74	C
AVERAGE	+2.9	-13.3	-0.3	-2.0	-2.5	74.7	C

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