

Agenda Item: 5

Pro-rating 2004 to make it easier to qualify by using 2004 as one of the qualifying years [INFORMATION and DISCUSSION]

CITY AND COUNTY OF
SAN FRANCISCO



TAXI COMMISSION
MAYOR GAVIN C. NEWSOM

HEIDI MACHEN
Executive Director

TO: HONORABLE COMMISSIONERS
FROM: HEIDI MACHEN *HSM*
RE: QUESTION OF PRO-RATING DRIVING REQUIREMENT FOR 2004
DATE: FEBRUARY 12, 2008

Background: San Francisco Municipal Police Code (MPC) 1121 (b) requires that permit applicants on the waiting list meet the full-time driving requirement for successive years in order to qualify as a medallion holder when they are offered a taxi medallion. Commissioners have requested whether the hours could be pro-rated for 2004 given that the law did not go into effect until mid-2004, one of the years that could be used for applicants seeking to qualify.

Short answer: Maybe. The Commission only has authority to interpret law via regulation when an ordinance is ambiguous. Otherwise, the plain language of the law controls and any regulation must be consistent with it. Municipal Police Code Section 1121 (b) is not ambiguous in its requirements. However, should the Commission decide that it is ambiguous in the context of the effective date of the legislation, it may be reasonable to consider pro-rating.

Analysis: It would have been physically possible to use 2004 to meet the 800 hour or 156-4 hour shift driving requirement by driving less than 40 hour work weeks starting on August 1, 2004. Between August 1, 2004 and December 31, 2004, there were 22 weeks. If you divide 800 hours by 22 weeks, a permit applicant could have achieved the driving requirement by working only 36.5 hours per week, or just 4 ten-hour shifts per week. Thus, the applicant could have safely completed 800 hours in the time available in 2004, even if he had done absolutely no other driving that year.

That said, subsequent years that the applicant can use to meet the driving requirement are full years unless the applicant's name arises at the beginning of a calendar year and wishes to use that present year as a driving year.

Important note: the Commission has already compensated for the possibility of an applicant's name arising at the beginning of a new year by allowing the applicant to apply for a time waiver and take the additional time they require during that present year if they wish to use the present year to qualify. The Commission has granted numerous time waivers on this basis. Because the plain wording of the ordinance says that the applicant must meet the driving requirement for the year in which his application is heard, the Commission be hard-pressed to justify allowing a pro-ration for the year in which the applicant is heard.

Conclusion: Should the Commission wish to pro-rate the driving required for the year

2004 given that the driving requirement went into effect mid-year, it could justify its action since the requirement went into effect mid-year yet the driving requirement is measured in subsequent years by a full year.

However, if the Commission chooses this route, it risks having possibly denied previous applicants who may have benefited from a re-interpretation of the ordinance. It may be hard pressed to justify the equity of its action. And, should the Commission still wish to proceed, it should consider how to notify all applicants who will arise over the next couple of years. Note that this interpretation would only affect a narrow segment of applicants heard in either 2008 or 2009 who drove in and wish to use a portion of 2004 as one of their qualifying years.*

In the event that the Commission still wishes to pro-rate 2004 to make it easier for a small number of applicants to qualify, here is one way that the driving requirement could be calculated using either the 800 hour requirement or the 156-4 hour shifts per month: Assuming an equal distribution under the 800 hour model, the resulting 66.6 hours per month driving requirement could be rounded up to 67 hours per month; 156- 4 hour shifts broken down by month equals 13 four hour shifts per month. Thus, with five months remaining in 2004 after the ordinance went into effect, a pro-rated requirement could reasonably equal either 335 hours or 65 – four hour shifts.

* Applicants wishing to meet the 2008 requirement may prove driving using any four out of the following five years: 2004, 2005, 2006, 2007, or 2008. And, drivers wishing to qualify under the 2009 standard of five out of the last six years may choose from 2004, 2005, 2006, 2007, 2008, or 2009. But, the following year, 2010 retains the same standard as 2009 but drops 2004 as a qualifying year because it is too distant.