

NEW YORK CITY POLICE DEPARTMENT
Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The New York City Police Department (“NYPD”) is proposing changes to the rules that governs the adjudication of hearings for the suspension and/or revocation of press credentials issued to members of the press. The change would amend section 11-11 and repeal section 11-12 of Chapter 11 of Title 38 of the Rules of the City of New York.

When and where is the hearing? The NYPD will hold a public hearing on the proposed rule changes online. The public hearing will take place from 10:00 AM to 12:00 PM on August 18, 2020. To participate in the public hearing, enter the Webex URL: <https://nypd.webex.com/nypd/j.php?MTID=m21bb7ea211ce69eaf3c39794c6bf87a>. If prompted to provide a meeting number or password, please enter the following: Meeting Number 129 624 6274 Password 1234. You may also join the meeting via device audio or dial-in via phone. To dial-in via phone, please use the following dial-in phone number and participant code: Phone 1-408-418-9388 Access Code 129 624 6274. You can also join by video system by dialing 1296246274@nypd.webex.com. You can also dial 173.243.2.68 and enter Meeting Number 129 624 6274. Whenever prompted for a password, the password is 1234.

How do I comment on the proposed rule? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Police Department through the NYC Rules Web Site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@nypd.gov.
- **Mail.** You can mail written comments to the Police Department City of New York, Assistant Deputy Commissioner of Legal Matters, Legal Bureau, One Police Plaza, Room 1406, New York, NY 10038.
- **Fax.** You can fax written comments to the Police Department City of New York, Assistant Deputy Commissioner of Legal Matters, Legal Bureau, at 646-610-8377.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 646-610-5400 and asking for Joseph Rizza or by emailing joseph.rizza@nypd.org by August 17, 2020 at 5:00 P.M. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign-up in advance. You can speak for up to three minutes.

To join the hearing, enter the Webex URL:
<https://nypd.webex.com/nypd/j.php?MTID=m21bb7ea211ce69eaf3c39794c6bf87a>.

If prompted to provide a password or number, please enter the following:
Meeting Number: 129 624 6274
Password: 1234

When joining the meeting you can join via device audio, or dial-in via phone. To dial-in via phone, please use the following dial-in phone number and participant code:

Phone: 1-408-418-9388
Access Code: 129 624 6274
Password (if requested): 1234

You can also join by video system:
Dial: 1296246274@nypd.webex.com
You can also dial 173.243.2.68
Meeting Number 129 624 6274
Password (if requested) 1234

If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and stutters.

Is there a deadline to submit written comments? Yes, you must submit written comments by August 18, 2020.

Do you need assistance to participate in the hearing? You must tell the NYPD Legal Bureau if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by mail at the address given above. You may also tell us by telephone at 646-610-5400 by asking for Joseph Rizza. You may also tell us by email at joseph.rizza@nypd.org. You must tell us by August 11, 2020.

Can I review the comments made on the proposed rule? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public.

What authorizes the NYPD to make these rules? Sections 1043 and 435 of the New York City Charter and sections 20-267, 20-273 and 20-277 of the New York City Administrative Code authorize the NYPD to make this proposed rule. This proposed rule was not included in the NYPD's regulatory agenda because the need for it was not anticipated at the time of the agenda's publication.

Where can I find the NYPD's rules? The NYPD's rules are in Title 38 of the Rules of the City of New York.

What rules govern the rulemaking process? The NYPD must meet the requirements of section 1043 of the New York City Charter when creating or changing rules. This notice is made in accordance with the requirements of section 1043 of the New York City Charter.

STATEMENT OF BASIS AND PURPOSE

Members of the press who cover news within the City of New York may apply to the NYPD Office of the Deputy Commissioner, Public Information (“DCPI”) for press credentials that entitle the bearer to certain access to cover breaking stories and events. Pursuant to Chapter 11 of Title 38 of the Rules of the City of New York, members of the press, should they meet specific criteria as outlined in 38 RCNY Section 11-01, may be issued a press credential by the Office of the Deputy Commissioner, Public Information. The press credential entitles the bearer to cross police lines to cover a news story, subject to legitimate concerns about safety and evidence preservation, as well as space limitations. However, a press credential is subject to a summary suspension or revocation if the credential holder abuses their privileges or engages in conduct that endangers public safety.

Currently, Sections 11-11(b), (c), (d), and (e) outline procedures for when a press credential is summarily suspended by the DCPI or the DCPI seeks to revoke the press credential. However, the NYPD seeks to clarify its policy governing when summary suspensions or revocations of NYPD-issued press credentials may be appropriate, and further set forth governing procedures for hearings associated with summary suspensions and/or revocations.

NYPD is proposing to:

- 1) Amend Section 11-11 in order to clarify its criteria and procedures to summarily suspend or revoke press credentials, and
- 2) Repeal Section 11-12.

Specifically, the proposed rule would:

- Set forth criteria for when a summary suspension or revocation of an NYPD-issued press credential may be appropriate;
- Set forth the procedures to be applied whenever a press credential is summarily suspended or is sought to be revoked by the DCPI; and
- Clarify procedures for hearings for when a press credential is summarily suspended or is sought to be revoked by the DCPI.

New material is underlined

[Deleted material is in brackets]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of the NYPD, unless otherwise specified or unless the context clearly indicates otherwise.

Chapter 11 of Title 38 of the Rules of the City of New York is amended to read as follows:

Subchapter B: [Appeal] Procedures [After] For Denial, Summary Suspension and Revocation

§11-11 Hearing Procedures.

(a) Denial.

(1) Any person who is denied any of the above-described press credentials may appeal and request a hearing with respect to such decision, in writing, to the Commanding Officer, Public Information Division, within twenty (20) days from the date of the denial. The applicant will be notified of a hearing date which shall be no more than thirty (30) days from receipt of the request for a hearing, unless there is a mutual agreement to another date. Any person denied a Single Event Press Card may request that the hearing be waived.

(2) If, after a hearing, the decision to deny the applicant's request for a press credential is upheld, the applicant will be advised in writing of the basis for the denial of the application. An appeal of this decision must be made, in writing, to the Deputy Commissioner, Public Information within twenty (20) days of the date contained in the "Notice of Hearing Result." Any documentation in support of the appeal must be submitted with the request to the Deputy Commissioner, Public Information. The Deputy Commissioner, Public Information shall issue a written decision, setting forth the basis for denial in the event the denial is upheld, or vacating the initial denial in the event the denial is not upheld, within thirty (30) days of the date when the appeal is received.

(b) [In those instances where any of the above-described press credentials are summarily suspended, a hearing may be requested by the holder of the press credential and such hearing shall be provided no later than five (5) business days from the request.]

Summary Suspension.

(1) The Deputy Commissioner, Public Information may summarily suspend a press credential that has been previously issued based upon:

(i) the press credential holder's lawful arrest based on the press credential holder's commission of a violation or crime; or

(ii) the press credential holder's failure to comply with a lawful order of a police officer; or

(iii) the press credential holder's intentional interference or attempt to interfere with the performance of a police officer's official function; or

(iv) the press credential holder misusing or misrepresenting the press credential while not acting in a news gathering capacity; or

(v) the press credential holder conducting an unauthorized transfer or assignment of such credential to an individual who has not been assigned any of the above-described press credentials; or

(vi) other conduct that endangers public safety or interferes with legitimate law enforcement needs.

(2) Where a press credential is seized by a member of the police department, the press credential holder shall receive a letter notice via email within two (2) business days of the seizure containing a copy of 38 R.C.N.Y. § 11-11 and advising the press credential holder of:

(i) the summary suspension of the press credential;

(ii) the reason or reasons for the summary suspension of the press credential;

(iii) the press credential holder's right to request a hearing contesting the decision to summarily suspend the press credential;

(iv) instructions on how to request a hearing; and that

(v) the maximum length for a summary suspension shall be no more than six (6) months, except if the summary suspension came as a result of a lawful arrest based on the press credential holder's commission of a violation or crime, then the length of the summary suspension may be extended until resolution of the criminal proceedings, and, in the event an arrest results in a conviction or guilty plea, then the length of the summary suspension may be extended by the Deputy Commissioner, Public Information for a maximum length of six (6) months or the period of the imprisonment that results from the conviction or guilty plea, whichever is greater.

(3) If the press credential holder requests a hearing to contest the decision to summarily suspend the press credential, a hearing shall be held within nine (9) business days of the request and the press credential holder will be notified of the hearing date. If the press credential holder does not respond to the letter notice within thirty (30) days, or if the press credential holder notifies the Deputy Commissioner, Public Information in writing that the press credential holder will not request a hearing, then the Commanding Officer of the Public Information Division will notify the press credential holder in writing of the length of the summary suspension and the reason for such suspension. In considering the length of the suspension, the Commanding Officer of the Public Information Division shall consider the criteria set forth in paragraph (1) of this subsection and the written notice to the press credential holder shall make reference to these criteria.

(4) Prior to a hearing, the Deputy Commissioner, Public Information will assign an investigator to the matter. The investigator:

(i) may, but is not required to, prepare a report on the matter. If a report is prepared, it shall be produced to the press credential holder or his or her attorney at least two (2) business days before the hearing and read into the record at the hearing; and

(ii) shall introduce into the record any documentary, photographic, and video evidence, including records and documents in possession of the police department relevant to the summary suspension of the press credential. Such evidence shall be

produced to the press credential holder or his or her attorney at least two (2) business days before the hearing;

(5) The press credential holder:

(i) has a right to be represented by counsel at the hearing, give testimony, bring witnesses, and introduce evidence that the press credential holder believes would be relevant to the issues that are the subject of the hearing. A list of any witnesses the press credential holder intends to call at the hearing must be provided to counsel for the New York City Police Department at least two (2) business days before the hearing so that they can make any necessary arrangements with security within the building. Failure to provide this list of witnesses may result in these individual(s) being prohibited from entering the building. If an investigator's report is prepared and if after reviewing said report, or receiving the evidence set forth in (b)(4)(ii) of these Rules, the press credential holder identifies another witness(es) the press credential holder would like to call, the press credential holder must provide the name of the witness(es) to counsel for the NYPD at least twenty-four (24) hours in advance of the scheduled hearing. Again, failure to provide the name of this additional witness(es) at least twenty-four (24) hours before the hearing may result in the individual(s) being prohibited from entering the building.

(ii) or the press credential holder's attorney may cross-examine the investigator about the substance of the evidence submitted into the record and about the investigator's report, if one was prepared;

(iii) or the press credential holder's attorney may not subpoena any documents or records from the police department or subpoena any City of New York or police department employee.

(6) The hearing officer:

(i) shall be the Commanding Officer of the Public Information Division. In the event of a conflict, the Commanding Officer shall designate a neutral and detached hearing officer to preside over the hearing. This shall include, but is not limited to, if the Commanding Officer participated in or witnessed the events in question, participated in the decision to seize the press credential at issue, or participated in the investigation;

(ii) shall disclose, on the record at the hearing, the existence and substance of any contacts with the assigned investigator, the press credential holder, or any witness scheduled to testify at the hearing;

(iii) may, at the hearing, ask questions of the investigator, press credential holder and/or any other witness;

(iv) has the discretion to disallow any question or questions on the grounds of relevance, duplicity, harassment, or if the questions are of a cumulative nature;

(v) may only consider evidence in the record at the hearing in deciding whether to uphold or vacate the summary suspension of the press credential; and

(vi) need not observe the rules of evidence observed by courts during the hearing.

(7) Agency counsel for the police department is permitted to be at the hearing, but may not question any witness. Agency counsel may, however, confer with the hearing officer before, during, and after the hearing.

(8) Only the hearing officer, press credential holder or the press credential holder's attorney may ask questions of any witness.

(9) The burden of proof shall be on the New York City Police Department to demonstrate, by a preponderance of the evidence, that the summary suspension was proper based upon the criteria as set for in paragraph (1) of this subsection.

(10) An audio record shall be made of all proceedings and, upon request, a copy of the audio record shall be provided to the press credential holder or if represented by counsel to the press credential holder's attorney within two (2) business days of such request.

(11) Within twenty-one (21) days of the conclusion of the hearing, the hearing officer shall issue a factually detailed, non-conclusory written decision, which shall include the length of the summary suspension if the decision to summarily suspend the press credential has been upheld. Should the hearing officer decide to vacate the summary suspension, the press credential holder shall be notified and the press credential shall be made available for pick up from the office of the Deputy Commissioner, Public Information within one (1) business day.

(12) Should the hearing officer uphold the summary suspension, the hearing officer shall determine the length of the summary suspension. In deciding the length of any summary suspension, the hearing officer shall consider:

(i) whether the misconduct actually occurred;

(ii) the severity of any misconduct;

(iii) the length of time the press credential holder has already been without the press credential;

(iv) the risk that the press credential holder will engage in future misconduct;

(v) the penalties imposed in other cases; and

(vi) any other equitable factors raised by the parties at the hearing.

(13) In the event a press credential is summarily suspended, the press credential holder may not obtain or use a reserve card during the suspension. The summary suspension of the press credential also suspends the use of any reserve card.

(c) [Whenever the revocation of the above-described press credentials is sought, a hearing shall be provided before such revocation shall take effect. However, if there has been a summary suspension of the press credential which is the subject of the revocation, the hearing for the suspension can also serve as the hearing required herein.]

Revocation.

(1) The Deputy Commissioner, Public Information may seek to revoke a press credential that has been previously issued based upon:

(i) two (2) or more legitimate summary suspensions of a press credential within that credential's two (2) year cycle; or

(ii) if the press credential holder's continued possession of the press credential creates legitimate safety or security concerns that cannot be resolved by a summary suspension.

(2) Whenever revocation of a press credential is sought by the Deputy Commissioner, Public Information, a hearing shall be held before such revocation shall take effect.

(3) Should the Deputy Commissioner, Public Information seek revocation of a press credential, the press credential holder shall receive a letter notice via email containing a copy of 38 R.C.N.Y. § 11-11 and advising the press credential holder of the date of the hearing. This letter notice shall also include the fact that Deputy Commissioner, Public Information seeks to revoke the press credential and the reason(s) Deputy Commissioner, Public Information is seeking such revocation.

(4) If a summary suspension occurs, Deputy Commissioner, Public Information may also seek revocation of the holder's press credential provided the criteria in paragraphs (1) and (3) of this subsection have been met. In that event, the hearing for the summary suspension may also serve as the hearing for the revocation.

(5) A revocation hearing shall be governed by the same rules that govern a summary suspension hearing. The burden of proof for the revocation of a press credential shall be on the New York City Police Department to demonstrate, by a preponderance of the evidence, that the revocation was proper in accordance with the criteria as set forth in paragraph (1) of this subsection.

(6) Within twenty-one (21) days of the conclusion of the hearing, the hearing officer shall issue a factually detailed, non-conclusory written decision stating the officer's determination regarding the press credential.

(7) If a press credential is revoked, then the press credential holder shall have the right to reapply for a new press credential one year after the date of the written decision to revoke the press credential.

(8) In the event a press credential is revoked, the press credential holder may not obtain and/or use a reserve card during the period of revocation. The revocation of the press credential also revokes the use of any reserve card.

~~(d) [At all such hearings the applicant will have the right to be represented by counsel.]~~ **Repealed**

~~(e) [The Commanding Officer, Public Information Division, shall hold the above-described hearings and issue a written decision within forty five (45) days of the conclusion of the hearing. In the event that the appeal is denied, the applicant shall be advised in writing of the basis for the denial. In the event that an applicant for a Single Event Press Card waives the hearing, the appeal will be decided by the Commanding Officer, Public Information Division as soon as practicable after the receipt of the appeal.]~~ **Repealed**

~~§ 11-12 Review by the Deputy Commissioner, Public Information~~ **Repealed**

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules for Suspension or Revocation of Press Credentials

REFERENCE NUMBER: 2020 RG 059

RULEMAKING AGENCY: New York Police Department

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting

Date: July 2, 2020
Corporation

Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Amendment of Rules for Suspension or Revocation of Press Credentials

REFERENCE NUMBER: NYPD-11

RULEMAKING AGENCY: New York Police Department

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

July 1, 2020
Date