

New York City Police Department

NOTICE OF ADOPTION

NOTICE OF ADOPTION of rules relating to the summary suspension and/or revocation of press credentials issued by the New York City Police Department (“NYPD”) to members of the press pursuant to Chapter 11 of Title 38 of the Rules of the City of New York.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the New York City Police Department by Sections 435 and 1043 of the New York City Charter, and in accordance with the requirements of Section 1043 of the New York City Charter, that the NYPD hereby amends Section 11-11 and repeals Section 11-12 of Chapter 11 of Title 38 of the Rules of the City of New York.

This rule was first published on July 16, 2020, and a public hearing was held on August 18, 2020. After receiving and reviewing public comments, changes were made to the proposed rules regarding denials, suspensions, and revocations of press credentials.

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 of 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 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 the criteria governing when summary suspensions or revocations of NYPD-issued press credentials may be appropriate, and further to set forth procedures for hearings associated with summary suspensions and/or revocations.

The NYPD has adopted revisions to its rules that:

- (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 rule:

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

Section 1. Section 11-11 of Subchapter B of 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 will be notified in writing of his/her right to appeal the denial and to request a hearing, and 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, as well as his/her right to appeal the denial of the application. An appeal of this decision must be made, in writing, to the Deputy Commissioner of 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 of Public Information. The Deputy Commissioner of Public Information will 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) Only a member of service with the rank of Sergeant or above or a member of the office of the Deputy Commissioner of Public Information may seize a press credential and shall contact the office of the Deputy Commissioner of Public Information, which shall determine whether to summarily suspend the press credential based upon:

(i) the press credential holder's lawful arrest due to the press credential holder's commission of (A) a misdemeanor while engaged in a newsgathering capacity, or (B) a felony; or

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

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

(2) Where a press credential is seized by a member of the NYPD, the press credential holder will 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:

(i) of the summary suspension of the press credential;

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

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

(iv) of instructions on how to request a hearing;

(v) that the maximum length for a summary suspension shall be no more than six (6) months, except that if the summary suspension resulted from a lawful arrest based on the press credential holder's commission of a misdemeanor or felony, 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 of 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; and

(vi) that he/she may request that the Deputy Commissioner of Public Information stay the summary suspension pending the outcome of a hearing the press card holder has requested in accordance with paragraph (3) of this subdivision. If such a stay request is made, the Deputy Commissioner of Public Information's decision to stay the summary suspension as set forth herein will be based on a consideration of ongoing public safety and legitimate law enforcement needs, and will be made within one (1) business day of the request. In the event that a stay is granted, the press credential will be returned to the press card holder the next business day pending the outcome of the hearing requested in accordance with paragraph (3) herein.

(3) If the press credential holder requests a hearing to contest the decision to summarily suspend the press credential, a hearing will be held within nine (9) business days of the request and the press credential holder will be notified by letter 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 of Public Information in writing that the press credential holder will not request a hearing, then the Commanding Officer, 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, Public Information Division will consider the criteria set forth in paragraphs (1) and (13) of this subdivision, and the written notice to the press credential holder will reference the criteria that are applicable in that case.

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

(i) will prepare a report on the matter. The report will 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) will introduce into the record any documentary, photographic, and video evidence, including records and documents in possession of the NYPD, relevant to the summary suspension of the press credential. Such evidence will 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 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 NYPD at least two (2) business days before the hearing so that any necessary arrangements for security within the building can be made. 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 such report, or receiving the evidence set forth in subdivision (b)(4)(ii) of these Rules, the press credential holder identifies one or more witnesses the press credential holder would like to call, the press credential holder must provide the name of such witnesses to counsel for the NYPD at least twenty-four (24) hours in advance of the scheduled hearing. Failure to provide the names of any additional witnesses at least twenty-four (24) hours before the hearing may result in such individuals being prohibited from entering the building;

(6) The press card holder or the press card holder's attorney:

(i) may cross-examine the investigator about the substance of the evidence submitted into the record and about the investigator's report;

(ii) may not subpoena any documents or records from the NYPD or subpoena any City of New York or NYPD employee.

(7) The hearing officer:

(i) will be the Commanding Officer, Public Information Division. In the event of a conflict, the Commanding Officer will designate a neutral and detached hearing officer to preside over the hearing. Such a conflict includes, but is not limited to, the Commanding Officer participating in or witnessing the events in question, participating in the decision to seize the press credential at issue, or participating in the investigation;

(ii) will disclose, on the record at the hearing, the existence and substance of any communications 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) may 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.

(8) Agency counsel for the NYPD 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.

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

(10) The burden of proof shall be on the NYPD to demonstrate, by a preponderance of the evidence, that the summary suspension was proper based upon the criteria set forth in paragraph (1) of this subdivision.

(11) An audio record will be made of all proceedings and, upon request, a copy of the audio record will 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.

(12) Within fourteen (14) days of the conclusion of the hearing, the hearing officer will issue a factually detailed, non-conclusory written decision, which will include the length of the summary suspension if the decision to summarily suspend the press credential is upheld. Should the hearing officer decide to vacate the summary suspension, the press credential holder will be notified immediately by email and the press credential will be made available for pick up from the office of the Deputy Commissioner of Public Information within one (1) business day.

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

(i) whether the misconduct actually occurred;

(ii) the seriousness 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 summary suspension cases; and

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

(14) 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 of 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 of Public Information, a hearing will be held before such revocation takes effect.

(3) Should the Deputy Commissioner of Public Information seek revocation of a press credential, the press credential holder will 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 will include the fact that the Deputy Commissioner of Public Information seeks to revoke the press credential and the reason(s) the Deputy Commissioner of Public Information is seeking such revocation.

(4) If a summary suspension occurs, Deputy Commissioner of Public Information may also seek revocation of the holder's press credential provided the criteria in paragraph (1) of this subdivision 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 will be governed by the same rules that govern a summary suspension hearing. The burden of proof for the revocation of a press credential is on the NYPD 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 fourteen (14) days of the conclusion of the hearing, the hearing officer will issue a factually detailed, non-conclusory written decision stating the hearing officer's determination regarding the revocation of the press credential.

(7) If a press credential is revoked, the press credential holder may 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.

(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.]

§ 2. Section 11-12 of Subchapter B of Chapter 11 of Title 38 of the Rules of the City of New York, relating to suspensions and revocations of press credentials, is REPEALED.