

## **NOTICE OF ADOPTION OF FINAL RULE**

### **New York City Mayor's Office of Media and Entertainment**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE MAYOR'S OFFICE OF MEDIA AND ENTERTAINMENT by § 1043 of the New York City Charter and § 3-119.4 of the New York City Administrative Code, that the Mayor's Office of Media and Entertainment promulgates and adopts a rule to establish procedures and process relating to press credentials. The New York City Policy Department will be repealing its rules for press credentials, which are currently codified at Title 38 of the Rules of the City of New York, Chapter 11.

The proposed Rules were published in the City Record on October 22, 2021 and a public hearing was held on November 23, 2021. Comments were received from press associations and First Amendment attorneys, and several of the issues they raised resulted in revisions to the rule as originally proposed. These changes include: requiring OATH to hold a hearing within a certain period of time after a request to appeal a denial is submitted to MOME; clarifying that MOME will promptly replace a press card if MOME determines that the press card was improperly seized; and specifying that supervisory or managerial personnel of a newsgathering organization must satisfy all application requirements to be eligible for and receive a Standard Press Card.

The Mayor's Office of Media and Entertainment now adopts the following Rule.

### **STATEMENT OF BASIS AND PURPOSE**

The Mayor's Office of Media and Entertainment ("MOME") currently comprises four divisions: the Office of Film, Theatre and Broadcasting, which coordinates film and television production throughout the five boroughs; NYC Media, the largest municipal television and radio broadcasting entity in the country with a reach of 18 million viewers within a 50-mile radius; workforce and educational initiatives in film, television, theater, music, publishing, advertising, and digital content to support the development of NYC's creative industries; and the Office of Nightlife, supporting the sustainable development of New York City's nightlife industry. Overall, MOME supports the employment of nearly half a million workers and oversees the generation of over \$104B in economic activity. MOME is in the process of establishing its fifth division, the Press Credential Unit.

In 2021, Local Law 46 was enacted, and it is codified as Administrative Code § 3-119.4. This law transfers the duty to issue press credentials from the New York City Police Department ("NYPD") to MOME, establishes a process for administrative appeals and hearings at the Office of Administrative Trials and Hearings ("OATH"), and requires MOME to promulgate rules. The NYPD rules for press credentials are currently codified at Title 38 of the Rules of the City of New York, Chapter 11. The NYPD will be repealing its rules as of the effective date of Local Law 46 of 2021 (January 20, 2022). Valid press credentials issued by the NYPD will remain valid until January 15, 2023 and will be subject to MOME's rules after the effective date of Local Law 46.

Under MOME’s final rule, the content of 38 RCNY §§ 11-01 to 11-03 will be moved to Title 43 of the RCNY, Chapter 16. The definitions will be moved to a new definition section within the new Chapter. Applications for press credentials will be submitted to MOME instead of NYPD.

MOME’s final rule comprises a comprehensive set of revisions to the NYPD’s existing “press card issuance” rules that are currently set forth in 38 RCNY § 11-11 to reflect the significant changes required by Administrative Code § 3-119.4. Specifically, anyone denied a press credential will be entitled to appeal such denial before OATH. Only MOME is authorized to suspend or revoke a press credential and such suspension or revocation may not occur until after the holder is provided with an opportunity to be heard before OATH. In addition, this rule sets forth application procedures for press credentials and establishes criteria for the denial, suspension, or revocation of a press credential.

It is the intention that these rules be administered in a manner that promotes a free and independent press, subject to reasonable safety and evidence preservation concerns.

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

New material is underlined.

Section 1. Title 43 of the Rules of the City of New York is amended by adding a new chapter 16 to read as follows:

## **Chapter 16: Press Credentials**

### **§ 16-01 Definitions.**

As used in this chapter, the following terms have the following meanings:

Commissioner. “Commissioner” means the Commissioner of the Office of Media and Entertainment.

Emergency, spot, or breaking news event. An “emergency, spot, or breaking news event” means an incident or occurrence in a public place within the City of New York that was unplanned or unforeseen by an agency of the City of New York and is the subject of newsgathering, including, but not limited to, a crime scene, fire, train wreck, bombing, and plane crash.

Event sponsored by the City of New York that is open to members of the press. An “event sponsored by the City of New York that is open to members of the press” means an event that is

organized by one or more agencies or offices of the City of New York that is available to more than one member of the press, including, but not limited to, a local press conference; provided, however, that such an event does not include a meeting of City employees or officials with individual members of the press or individuals engaged by a single newsgathering organization.

Member of the press. A “member of the press” means an individual who gathers and reports the news, by publishing, broadcasting, or cablecasting articles, commentaries, books, photographs, video, film, or audio by electronic, print, or digital media such as radio, television, newspapers, magazines, wire, books, and the Internet, including but not limited to an employee of a newsgathering organization or a self-employed newsperson.

Newsgathering organization. A “newsgathering organization” is an organization or entity that gathers and reports the news by publishing, broadcasting, or cablecasting articles, commentaries, books, photographs, video, film, or audio by electronic, print, or digital media such as radio, television, newspapers, magazines, wire, books, and the Internet.

Press credential. A “press credential” means a Standard Press Card, a Reserve Press Card, or a Single Event Press Card.

Press Credential Unit. The MOME Press Credential Unit (“PCU”) is the division within MOME that administers and oversees the press credential issuance program.

Public event of a non-emergency nature. A “public event of a non-emergency nature” means an event in a public place within the City of New York that was planned, anticipated, approved, or permitted by one or more agencies or offices of the City of New York, including, but not limited to, a parade or demonstration.

Reserve Press Card. A “Reserve Press Card” means a credential issued to a newsgathering organization pursuant to § 16-04 of this chapter.

Reserve Press Card authorized user. A “Reserve Press Card authorized user” means a member of the press who has been temporarily issued a Reserve Press Card by a newsgathering organization pursuant to § 16-04 of this chapter.

Single Event. A “Single Event” means a discrete activity that is an emergency, spot, or breaking news event, a public event of a non-emergency nature, or an event sponsored by the City of New York that is open to members of the press.

Single Event Press Card. A “Single Event Press Card” means a credential issued pursuant to § 16-05 of this chapter to a member of the press to cover a Single Event.

Standard Press Card. A “Standard Press Card” means a credential issued to a member of the press pursuant to § 16-03 of this chapter.

**§ 16-02 Press Card Access.**

- (a) A Standard Press Card holder, a Single Event Press Card holder, or a Reserve Press Card authorized user is entitled (i) subject to space limitations and safety and evidence preservation concerns, to cross police, fire lines, or other restrictions, limitations or barriers established by the City of New York at emergency, spot, or breaking news events and public events of a non-emergency nature where police, fire lines, or other restrictions, limitations, or barriers established by the City of New York have been set up for security or crowd control purposes, within the City of New York; and (ii) subject to space limitations and safety concerns, to attend events sponsored by the City of New York that are open to members of the press.
  
- (b) When there is a denial of a Standard Press Card holder's, Single Event Press Card holder's, or Reserve Press Card authorized user's ability to cross police or fire lines, or other restrictions, limitations, or barriers established by the City of New York or attend events sponsored by the City of New York, such denial must come from an authorized person of the City agency(ies) or office(s) sponsoring the event or a supervising officer or a member of the Office of the Deputy Commissioner, Public Information of the New York City Police Department ("NYPD").
  
- (c) Upon request from an authorized person of the City agency(ies) or offices sponsoring the event or a supervising officer or a member of the Office of the Deputy Commissioner, Public Information of the NYPD, a Reserve Press Card authorized user must provide identification (i) when seeking to cross police or fire lines, or other restrictions, limitations, or barriers established by the City of New York or attend events sponsored by the City of New York; and (ii) at any time after such access has been granted.

**§ 16-03 Standard Press Card.**

- (a) To be eligible for a Standard Press Card, an individual must be a member of the press who covers, in person:
  - i. emergency, spot, or breaking news events, or public events of a non-emergency nature where police or fire lines, or other restrictions, limitations, or barriers established by the City of New York have been set up for security or crowd control purposes; or
  - ii. events sponsored by the City of New York that are open to members of the press.
  
- (b) Supervisory or managerial personnel of a newsgathering organization may be issued the Standard Press Card if their responsibilities require that they cover, in

person, the events specified in paragraphs (i) or (ii) of subdivision (a) of this section.

- (c) The Standard Press Card cycle is two (2) years. All Standard Press Cards expire on January 15 of every odd year.
- (d) The Standard Press Card must bear the name and photograph of the individual to whom it is issued, and the name of the newsgathering organization, if any, that employs such member of the press, together with other information designated by the Commissioner or head of the PCU. Any additional information designated by the Commissioner or head of the PCU shall be provided on MOME's website.
- (e) An individual who is eligible under subdivision (a) or (b) of this section may apply for a Standard Press Card by completing an application that includes the applicant's personal identifying information and the name of the newsgathering organization, if any, that employs the individual. The applicant must submit six (6) or more articles, commentaries, books, photographs, videos, films, or audios published, broadcast, or cablecast within the twenty-four (24) months immediately preceding the Standard Press Card application, sufficient to show that such applicant covered, in person, six (6) or more events occurring on separate days described in subdivision (a) of this section.
- (f) An application for a Standard Press Card will be granted or denied no later than thirty (30) days after the applicant submits a complete application for the Press Card. If an application for a Standard Press Card is denied, the applicant shall be advised in writing of the basis for the denial.
- (g) An individual must appear in person to pick up a Standard Press Card if their application is granted. If the individual was issued a Standard Press Card during the previous cycle, they must surrender such card in person to MOME. If such card was lost or stolen, they must provide a Verification of Crime/Lost Property Report issued by the New York City Police Department.

#### **§ 16-04 Reserve Press Card.**

- (a) A Reserve Press Card is only issued to a newsgathering organization that employs or otherwise engages an individual(s) who is a member of the press to cover, in person:
  - i. emergency, spot, or breaking news events, or public events of a non-emergency nature, where police, fire lines, or other restrictions, limitations, or barriers established by the City of New York have been set up for security or crowd control purposes; or

- ii. events sponsored by the City of New York that are open to members of the press.
  
- (b) In its discretion, the Mayor's Office of Media and Entertainment may issue more than one Reserve Press Card to a single newsgathering organization based on the newsgathering organization's demonstration of need.
  
- (c) The Reserve Press Card cycle is two (2) years. All Reserve Press Cards expire on January 15 of every odd year.
  
- (d) The Reserve Press Card bears the name of the newsgathering organization to which it is issued together with other information designated by the Commissioner or head of the PCU. Any additional information designated by the Commissioner or head of the PCU shall be provided on MOME's website.
  
- (e) A newsgathering organization that qualifies under subdivision (a) of this section may apply by completing an application that includes information about the newsgathering organization and members of the press engaged by the newsgathering organization. The newsgathering organization must submit six (6) or more articles, commentaries, books, photographs, videos, films, or audios published, broadcast, or cablecast on separate days within the twenty-four (24) months immediately preceding the Reserve Press Card application, sufficient to show that the newsgathering organization complies with subdivision (a) of this section.
  
- (f) An application for a Reserve Press Card shall be granted or denied no later than thirty (30) days after the applicant submits a complete application for the Reserve Press Card. If an application for a Reserve Press Card is denied, the applicant shall be advised in writing of the basis for the denial pursuant to §16-06 of this chapter.
  
- (g) An editor or supervising employee of a newsgathering organization must appear in person to pick up the Reserve Press Card(s) if the application is approved. If the newsgathering organization was issued a Reserve Press Card(s) during the previous cycle, it must surrender all such card(s) in person to MOME. If such card(s) was lost or stolen, it must provide a Verification of Crime/Lost Property Report issued by the NYPD.
  
- (h) Any editor or supervising employee of a newsgathering organization holding a Reserve Press Card(s) may provide a Reserve Press Card to an individual who is a member of the press employed or engaged by the newsgathering organization if:
  - i. such individual does not already have a Standard Press Card issued in accordance with § 16-03 of this chapter;

- ii. such individual is not currently subject to a period of suspension or revocation of a Standard Press Card or Single Event Press Card, or such individual's conduct within the past six (6) months is not characterized by any of the criteria for suspension or revocation set forth in paragraph (iii) of subdivision (b) or paragraph (iii) of subdivision (c) of § 16-06; and
- iii. the newsgathering organization directs such individual to complete a specific assignment that requires the individual to cover, in person:
  - (A) an emergency, spot, or breaking news event, or a public event of a non-emergency nature, where police or fire lines, or other restrictions, limitations, or barriers established by the City of New York have been set up for security or crowd control purposes; or
  - (B) cover, in person, an event sponsored by the City of New York that is open to members of the press.
- (i) When the editor or supervising employee of the newsgathering organization has determined that the Reserve Press Card authorized user completed the specific assignment for which the Reserve Press Card was issued, the Reserve Press Card authorized user must promptly return the Reserve Press Card to the editor or supervising employee of the newsgathering organization.

**§16-05 Single Event Press Card.**

- (a) To be eligible for a Single Event Press Card for a Single Event, an individual must be a member of the press who:
  - i. published, broadcast, or cablecast six (6) or more articles, commentaries, books, photographs, videos, films, or audios within the twenty-four (24) months immediately preceding pre-registration;
  - ii. completed the pre-registration process set forth in subdivision (e) of this section; and
  - iii. timely submitted a completed application for a Single Event Press Card.
- (b) An individual must apply for a Single Event Press Card by the following deadlines:
  - i. no fewer than ten (10) days before the Single Event if the Single Event was announced to the public at least two (2) weeks in advance of the Single Event; or

- ii. no later than two (2) business days after the Single Event was announced to the public for a Single Event scheduled fewer than two (2) weeks in advance; or
  - iii. if there is less than two (2) days' notice of the Single Event or in an exigent circumstance, the application should be submitted as soon as practicable.
- (c) Each pre-registration will be valid for up to two (2) years, expiring on January 15 of every odd year. Each Single Event Press Card will be valid for the shorter of the duration of the Single Event or twenty-four (24) hours; provided, however, that MOME may issue a Single Event Press Card for longer than twenty-four (24) hours if the Single Event has a duration of more than twenty-four (24) hours.
- (d) A Single Event Press Card bears the name, photograph, and newsgathering organization, if any, that employs the member of the press to whom it is issued, together with other information designated by the Commissioner or head of the PCU.
- (e) An individual may
- i. pre-register by completing an application that includes such applicant's personal identifying information and the name of the newsgathering organization, if any, that employs the individual. The applicant must submit six (6) or more articles, commentaries, books, photographs, videos, films, or audios published, broadcast, or cablecast within the twenty-four (24) months immediately preceding the pre-registration, sufficient to show that such applicant covered, in person, six (6) or more events occurring on separate days; and
  - ii. apply for a Single Event Press Card by providing information that describes the Single Event, including the date(s) and location(s) of such Single Event; and
  - iii. apply for a renewal of a Single Event Press Card upon a demonstration that the Single Event is continuing beyond the expiration of the Single Event Press Card that has been issued to such individual.
- (f) An application for a Single Event Press Card will be granted or denied no later than two (2) business days before the scheduled event, except that in the case of applications submitted fewer than two (2) weeks before the scheduled event, the application shall be granted or denied as soon as practicable. If an application for a Press Card is denied, the applicant shall be advised in writing of the basis for the denial pursuant to § 16-06 of this chapter.



- (g) An individual must appear in person to obtain a Single Event Press Card if their application is granted.
- (h) MOME’s failure to issue a Single Event Press Card prior to the conclusion of a Single Event that is the subject of an application shall not be deemed to constitute a denial subject to subdivision (a) of § 16-06 of this chapter if such application was received fewer than two (2) weeks in advance of such Single Event.
- (i) Within three (3) business days of the expiration of a Single Event Press Card, the Single Event Press Card holder must return the card in person to MOME.

**§16-06 Appeals and Hearings.**

- (a) Denial of application.

- i. Right to appeal.

- (A) Any applicant who is denied a press credential shall be notified in writing of the basis of the denial and their right to appeal the denial by requesting a hearing before the adjudicatory body authorized to conduct trials at the Office of Administrative Trials and Hearings (“OATH”), in accordance with § 1046 of the City Charter and Title 48 of the Rules of the City of New York.

- (B) An applicant seeking to appeal a denial to OATH must request, through MOME, a hearing within sixty-five (65) days of the date of the denial. The request to MOME must be in writing and submitted on a form prescribed by MOME, which shall process the request and forward to OATH all relevant documentation received from the applicant.

- (C) Upon receipt of the request submitted through MOME, OATH will hold the hearing within sixty (60) days of the date the applicant’s request was received by MOME, except where the parties jointly agree on a later hearing date, an adjournment is granted pursuant to OATH’s rules of practice and procedures, or where extraordinary circumstances prevent such scheduling, as determined by the Chief Administrative Law Judge or their designee.

- ii. Criteria. One or more of the following criteria must be met to justify a denial of an application for a press credential:

- (A) The applicant failed to meet the eligibility qualifications described in the definition of a “member of the press” or “newsgathering organization”, as applicable, set forth in § 16-01 of this chapter; or

- (B) The applicant failed to meet the eligibility requirements for the press credential; or
- (C) The applicant failed to complete all administrative requirements or instructions set forth in these rules or in the application; provided, however, that MOME will notify the applicant of any incomplete requirements and provide an opportunity for the applicant to complete the application within five (5) business days of notification; or
- (D) The applicant failed to truthfully respond to application questions or provided fraudulent proof of eligibility; provided, however, that the application will not be denied on the basis of an immaterial error in the application that is corrected by the applicant within five (5) business days of notification by MOME; or
- (E) The applicant (1) has an open case for a lawful arrest for, pled guilty to, or was convicted of a misdemeanor while newsgathering or has an open case for a lawful arrest for, pled guilty to, or was convicted of a felony; and (2) the Mayor's Office of Media and Entertainment determines that granting a press credential to such applicant would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public; or
- (F) The applicant failed to complete a period of suspension or revocation concerning a previously issued press credential; or
- (G) The applicant was responsible for the misconduct resulting in the suspension or revocation of a Reserve Press Card and such period of suspension or revocation has not expired.

(b) Suspension.

- i. Right to a hearing. MOME is the only agency authorized to suspend a press credential. A press credential may not be suspended by MOME prior to a hearing and a determination that a suspension is proper, based on the criteria set forth in paragraph (iii) of this subdivision. Upon MOME's determination that a press card was seized by an agency, office, official, or employee of the City of New York in violation of this paragraph, MOME shall promptly replace the press card.

- ii. Procedure and burden of proof. The hearing will be held before the adjudicatory body authorized to conduct trials at OATH, in accordance with section 1046 of the Charter and Title 48 of the Rules of the City of New York; provided, however, that consistent with subdivision (f) of § 3-119.4 of the New York City Administrative Code, the applicable burden of proof for a suspension of a press credential is clear and convincing evidence.
  
- iii. Criteria. One or more of the following criteria must be met to justify the suspension of a press credential. The Standard Press Card holder or Single Event Press Card holder:
  - (A) (1) has an open case for a lawful arrest for, pled guilty to, or was convicted of a misdemeanor while newsgathering or has an open case for a lawful arrest for, pled guilty to, or was convicted of a felony and (2) continued use of the press credential would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public; or
  - (B) while engaged in a newsgathering capacity, failed to comply with a lawful order of a police officer or an authorized person of the City agency(ies) or office(s) sponsoring the event; or
  - (C) while engaged in a newsgathering capacity, intentionally interfered or attempted to interfere with the performance of an official function of a police officer or an authorized person of the City agency(ies) or office(s) sponsoring the event; or
  - (D) misused or misrepresented the press credential while not acting in a newsgathering capacity; or
  - (E) conducted an unauthorized transfer or assignment of such credential to an individual who had not been issued a press credential at the time of transfer or assignment; or
  - (F) engaged in other conduct that involved an unreasonable risk to property or to the safety or welfare of specific individuals or the general public or interfered with official law enforcement or emergency personnel needs while engaged in a newsgathering capacity.
  
- iv. Reserve Press Cards. A newsgathering organization's Reserve Press Card(s) may be suspended if the Reserve Press Card authorized user meets at least one of the criteria set forth in subparagraphs (B)-(F) of paragraph (iii) of this subdivision or such individual has an open case for a lawful arrest for, pled guilty to, or was convicted of a misdemeanor or a felony in

connection with the use of the newsgathering organization's Reserve Press Card(s) and (2) the newsgathering organization's continued use of a Reserve Press Card(s) would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

v. Period of suspension.

(A) The hearing officer will consider the following factors in determining the length of a suspension:

1. whether misconduct actually occurred;
2. the seriousness of any misconduct;
3. the risk that the press credential holder will engage in future misconduct or, in the case of a Reserve Press Card, the Reserve Press Card authorized user will engage in future misconduct;
4. the press credential holder's history of suspensions or a prior revocation, if any; and
5. any other factors raised by the parties at the hearing.

(B) The maximum length of a suspension shall be no more than six (6) months, except that if the suspension resulted from a lawful arrest or indictment based on the press credential holder's or Reserve Press Card authorized user's commission of a misdemeanor or felony, then the length of the suspension may be extended until resolution of the criminal proceedings, and, if an arrest results in a conviction or guilty plea, then the length of the suspension shall be the period of imprisonment that results from the conviction or guilty plea or six months, whichever is greater.

vi. Press credentials during suspension. If a Standard Press Card or a Single Event Press Card is suspended, the Standard Press Card holder or Single Event Press Card holder may not obtain or use a press credential during the period of suspension.

vii. Expiration during suspension. If a press credential expires during suspension, the press credential holder may not apply for a new press credential until the period of suspension is complete.

(c) Revocation.

i. Right to a hearing. MOME is the only agency authorized to revoke a press credential. A press credential may not be revoked by MOME prior to a hearing and a determination that a revocation is proper based on the criteria set forth in paragraph (iii) of this subdivision. Upon MOME's determination that a press card was seized by an agency, office, official, or

employee of the City of New York in violation of this paragraph, MOME shall promptly replace the press card.

- ii. Procedure and burden of proof. The hearing will be held before the adjudicatory body authorized to conduct trials at OATH, in accordance with section 1046 of the City Charter and Title 48 of the Rules of the City of New York; provided, however, that consistent with subdivision (f) of § 3-119.4 of the New York City Administrative Code, the applicable burden of proof for a revocation of a press credential is clear and convincing evidence.
  
- iii. Criteria. One or more of the following criteria must be met to justify the revocation of a press credential. The Standard Press Card holder, Single Event Press Card holder or the Reserve Press Card holder:
  - (A) made a misrepresentation or a made a material error or omission in the press credential application which, if known by MOME at the time of application, would have justified a denial; or
  
  - (B) had two or more suspensions of a press credential within that credential's two-year cycle; or
  
  - (C) used a press credential during a period of suspension or revocation; or
  
  - (D) the Press Card holder's continued possession of a press credential creates an unreasonable risk to property or to the safety or welfare of specific individuals or the general public that cannot be resolved by a suspension.
  
- iv. If a press credential is revoked, the press credential holder may not re-apply for a new press credential until one year after the date of the written decision to revoke the press credential.
  
- v. Press credentials during revocation. If a press credential is revoked, the press credential holder may not obtain or use a press credential during the period of revocation.