
BEFORE THE
NEW YORK CITY POLICE DEPARTMENT
LEGAL BUREAU
NEW YORK, NY

NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON PROPOSED
RULES RELATING TO PRESS CREDENTIALS AS REQUIRED BY LOCAL LAW 46 OF
2021, TRANSFERRING RESPONSIBILITY TO ISSUE PRESS CREDENTIALS FROM THE
NYPD TO THE MAYOR'S OFFICE OF MEDIA AND ENTERTAINMENT ("MOME")

Pursuant to Sections 389(b) and 1043 of the City Charter and
section 3-119.4 of the City Administrative Code

**COMMENTS OF THE
NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION
JOINED BY
COMMITTEE TO PROTECT JOURNALISTS,
DEADLINE CLUB,
FIRST LOOK MEDIA'S PRESS FREEDOM DEFENSE FUND,
NEW YORK NEWS PUBLISHERS ASSOCIATION,
NEW YORK PRESS PHOTOGRAPHERS ASSOCIATION,
RADIO TELEVISION DIGITAL NEWS ASSOCIATION,
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
SOCIETY OF PROFESSIONAL JOURNALISTS**

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Introduction

The National Press Photographers Association (NPPA),¹ joined by the Committee to Protect Journalists (CPJ),² the Deadline Club,³ First Look Media's Press Freedom Defense Fund (PFDF),⁴ the New York News Publishers Association (NYNPA),⁵ the New York Press Photographers Association (NYPPA),⁶ the Radio and Television Digital News Association (RTDNA),⁷ the Reporters Committee for Freedom of the Press,⁸ and the

¹ **National Press Photographers Association (NPPA)**, Founded in 1946, is a 501(c)(6) non-profit professional organization dedicated to the advancement of photojournalism, its creation, editing and distribution in all news media. NPPA encourages photojournalists to reflect the highest standards of quality in their professional performance, in their business practices and in their personal code of ethics. NPPA vigorously promotes freedom of the press in all its forms. Its members include still and television photographers, editors, students and representatives of businesses that serve the photojournalism industry.

² **Committee to Protect Journalists (CPJ)** is an independent, nonprofit organization that promotes press freedom worldwide. We defend the right of journalists to report the news safely and without fear of reprisal.

³ **Deadline Club** is one of the Society of Professional Journalists' largest chapters, serving New York-area journalists since 1925. The Deadline Club is dedicated to perpetuating freedom of the press, encouraging the highest standards of excellence and ethics, and fostering career development through its awards, scholarships, workshops, talks, and social networking mixers.

⁴ **First Look Media's Press Freedom Defense Fund (PFDF)** provides essential legal support for journalists, news organizations, and whistleblowers who are targeted by governments, corporations or other powerful figures because they have tried to bring to light information that is in the public interest and necessary for a functioning democracy. The Fund also provides legal resources for operational needs of reporters and news organizations through a pro bono law firm and provides training and education programs to an array of media law professionals, nonprofit organizations, and professional gatherings. The PFDF fearlessly and relentlessly dedicates itself to protecting the First Amendment. Free speech should be regarded as a right, investigative reporting as a duty, and whistleblowing as an act of bravery.

⁵ **New York News Publishers Association (NYNPA)** is the non-profit trade association representing the daily, weekly, and online newspapers of New York State. NYNPA monitors the New York State Legislature on behalf of the newspaper industry, opposing unfavorable legislation and working to craft new laws to open up government activities to public scrutiny.

⁶ **New York Press Photographers Association (NYPPA)** was established in 1913 to serve working photographers as a professional and social organization. The Association members work for news organizations in the print and electronic media based within a seventy-five-mile radius of Manhattan. The organization maintains a liaison with Governmental agencies whose actions directly affect the Media.

⁷ **Radio Television Digital News Association (RTDNA)** is the world's largest professional organization devoted exclusively to broadcast and digital journalism. Founded as a grassroots organization in 1946, RTDNA's mission is to promote and protect responsible journalism. RTDNA defends the First Amendment rights of electronic journalists throughout the country.

⁸ **Reporters Committee for Freedom of the Press (RCFP)** is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment Freedoms and the newsgathering rights of journalists.

Society of Professional Journalists (SPJ)⁹ respectfully submit the following comment.

Summary

As both staff photographers and freelance visual journalists, members of the National Press Photographers Association (NPPA), and other press organizations gather and report the news for publication by means of print, radio, television, Internet, and other forms of media.

NPPA submits these Comments on the Proposed Rule, certified on April 25, 2021, implementing Sections 389(b) and 1043 of the City Charter and section 3-119.4 of the City Administrative Code (Local Law 46 of 2021) regarding “Rules Relating to Press Credentials,” Reference Number MOME-7. These rules transfer the responsibility to issue press credentials from the New York City Police Department (NYPD) to the Mayor’s Office of Media and Entertainment (“MOME”), effective January 20, 2022, by moving the content of 38 RCNY sections 11-01 to 11-03 to Title 43 of the RCNY, Chapter 16.

On August 17, 2020, NPPA filed Comments regarding the NYPD proposed “Amendment of Rules for Suspension or Revocation of Press Credentials,” Reference Number 2020 RG 059, in which we proposed that whenever suspension or revocation of a press credential is sought, a due process hearing shall be held before such suspension or revocation shall take effect. We commend MOME for doing just that as part of their proposed press credentialing rule.

⁹ **Society of Professional Journalists (SPJ)** is the nation’s most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry through the daily work of its roughly 6,000 members; works to inspire and educate current and future journalists through professional development; and protects First Amendment guarantees of freedom of speech and press through its advocacy efforts.

NPPA is particularly pleased with several other proposals including: clarifying that only MOME may suspend or revoke a press credential; prohibiting the suspension or revocation of a press credential prior to a hearing; enhancing due process protections (i.e., notice and opportunity to be heard) afforded to journalists during suspension and revocation hearings; imposing a “clear and convincing evidence” burden of proof on MOME prior to the suspension or revocation of a press credential; granting journalists the power to subpoena relevant witnesses during suspension and revocation hearings; ensuring independent adjudication of the issuance, suspension or revocation of press credentials by transferring such authority from the NYPD to MOME.

Background

Ten (10) years ago, spurred by a previous lawsuit,¹⁰ NPPA provided comments to a notice of proposed rulemaking regarding revisions to 38 RCNY §§ 11-01, 11-02, 11-03 and 11-04. relating to the “Issuance of Working Press Cards, Reserve Working Press Cards, Single Event Working Press Cards and Press Identification Cards.” NPPA noted then, that the proposed rule change was overly broad, as well as arbitrary and capricious and failed to adequately address the issue of seizure, suspension, and revocation of the working press cards (credentials).

Following another lawsuit and ten-years later, NPPA again filed comments to NYPD’s proposed amendment of 38 RCNY § 11-11 clarifying its criteria and procedures to suspend or revoke press credentials.

¹⁰ See: *Martinez-Alequin et al v. The City of New York et al*, Case No. 1:08-cv-09701 (SDNY 2007).

On February 12, 2021, NPPA filed testimony regarding New York City Council, Introduction number 2118 (Int. No. 2118), a local law to amend the Administrative Code of the City of New York, in relation to press credentials.

As we did previously, NPPA submits this Comment in the hope of further clarifying such press credentialing requirements, criteria and procedures, as well as narrowing the scope of when and how press credential suspensions and revocations may take place. Additionally, the NPPA offers the service and vast expertise of its members should the MOME wish any additional input and advice regarding the proposed rule.

Additional Recommendations

While NPPA believes the proposed rule represents an important next step—because it places the authority to issue, suspend and revoke press credentials solely with MOME (thus prohibiting NYPD, or any other agency, to threaten to, or summarily seize/suspend/revoke those credentials) and better defines/strengthens the procedural due process rights of journalists who possess such credentials—we assert that it should go further in defining the criteria under which suspensions and revocations may occur.

As noted in the proposed revisions below, NPPA is concerned that the current criteria for suspensions and revocations based on “lawful arrests” for violations, misdemeanors, and felonies is still far too broad. As previously, cited “In our own time and place, criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something.”¹¹ The very “catch and release” charges we have seen NYPD employ to chill the First Amendment rights of the

¹¹ *Nieves v. Bartlett*, 139 S. Ct. 1715, 1730 (2019), J. Gorsuch concurring.

press result in criminal consequences based on subjective criteria. This broad discretion has been so abused that the U.S. Department of Justice expressed its concern “that discretionary charges, such as disorderly conduct, loitering, disturbing the peace, and resisting arrest, are all too easily used to curtail expressive conduct or retaliate against individuals for exercising their First Amendment rights.”¹²

Therefore, the “lawful arrest” criteria should be deleted and replaced with language as noted below. If MOME chooses not to do so, an alternative would be to add a provision to Sections 16.06(b) and 16.06(c)(iii)(B) that, if after an arrest, a journalist is acquitted or not convicted of a crime, the journalist’s press credentials should be immediately restored, and that the arrest cannot be used as the basis for a permanent revocation or future denial of press credentials. Similarly, the language set forth in section 16.06(b)(iii)(B) regarding failure to comply with a “lawful order” is overly broad, and should also be stricken completely, as it leaves open far too much opportunity for abuse of discretion in suspending or revoking a press credential. Additionally, the criteria set forth in section 16.06(b)(iii)(D) citing press credential misuse or misrepresentation should be better defined or struck as the terms “misused” or “misrepresented” are overly broad and vague terms.

There is currently no temporal or geographic limiting language in the section, and NPPA proposes that this provision be limited to convictions or guilty pleas within the past two years for illegal conduct taking place in New York City, as set forth below.

Also of concern, is what may be perceived as a conflict of interest between the new

¹² See, e.g., Statement of Interest of the United States, *Garcia v. Montgomery Cty., Md.*, No. 8:12-cv-03592-JFM (D. Md. Mar. 4, 2013), Dkt. 15 at 1-2. (Addressing discretionary charges filed against a photojournalist).

Press Credential Unit (“PCU”) and some of the other listed divisions of MOME such as the Office of Film, Theatre and Broadcasting (“OFTB”) and the Office of Nightlife. As credentialed and non-credentialed journalists often cover events sponsored or granted permits by these MOME offices we believe it would be in everyone’s best interest to address those concerns before a final rule is implemented and at the very least establish firewalls between those divisions with clear written guidelines regarding how such conflicts shall be resolved.

NPPA is concerned about the statistics we have reviewed showing a high percentage of cases where OATH upheld an agency’s initial determination. As such, we propose that additional data be gathered during the first year this rule is in effect to help determine whether, with specific reference to rulings regarding press credential suspensions and revocations, this issue needs to be further addressed.

NPPA proposes that the new rule include the following changes where:

New material is underlined in blue

~~Deleted material is strikethrough in red~~

Material to be considered for clarification/revision is italicized in green

- Single Event Press Card **§16-05(c)** Each preregistration will be valid for up to two years, expiring on January 15 of every odd year. A member of the press who has been issued a Standard Press Card can apply for renewal beginning sixty (60) days prior to expiration. Each Single Event Press Card will be valid for the shorter of the duration of the Single Event or 24 hours; provided, however, that the Mayor’s Office of Media and Entertainment may issue a Single Event Press Card for longer than 24 hours if the Single Event has a duration of more than 24 hours.
~~• if the 24-hour period would end on a weekend or City government holiday and the Single Event has a duration of more than 24 hours.~~
- Single Event Press Card **§16-05(i)** Within ~~one~~ five (5) business days of the expiration of a Single Event Press Card, the Single Event Press Card holder must return the card ~~in person~~ to the Mayor’s Office of Media and Entertainment.
- Denial of Application **§16-06(a)(i)** Add, Once a hearing is requested it must be held within thirty (30) days from receipt of the request. to the end of that subsection.

- Denial of Application. Criteria. **§16-06(a)(ii)(E)** The applicant (1) ~~has an open case for a lawful arrest~~ within the past two (2) years pled guilty to, or was convicted of a misdemeanor committed in the City of New York while newsgathering or within the past two (2) years pled guilty to, or was convicted of a felony committed in the City of New York.
- Denial of Application. Criteria. **§16-06(a)(iii)** If, after a hearing, the decision to deny the applicant's request for a press credential is upheld or reversed, the applicant will be advised in writing and sent via email with a copy sent by FedEx Priority Overnight Delivery or any other nationally recognized trackable service within seven (7) days of such decision.
- Suspension. Right to a Hearing. **§16-06(b)(i)** The Mayor's Office of Media and Entertainment is the only agency authorized to suspend a press credential. Summary seizure of a press credential is expressly prohibited and should such summary seizure occur, the press credential shall be promptly replaced by MOME.
- Suspension. Criteria. **§16-06(b)(iii)(A)** ~~(1) has an open case for a lawful arrest~~ (1) within the past two (2) years pled guilty to, or was convicted of a misdemeanor committed in the City of New York while newsgathering or within the past two (2) years pled guilty to, or was convicted of a felony committed in the City of New York 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
- Suspension. Criteria. **§16-06(b)(iii)(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~~
- Suspension. Criteria. **§16-06(b)(iii)(C)** while engaged in a newsgathering capacity, intentionally and materially interfered or attempted to materially 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
- Suspension. Criteria. **§16-06(b)(iii)(D)** *misused or misrepresented the press credential while not acting in a newsgathering capacity; or*
- Suspension. Criteria. **§16-06(b)(iii)(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 materially interfered with official law enforcement or emergency personnel needs while engaged in a newsgathering capacity.
- Reserve Press Cards. **§16-06(b)(iv)** 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 subdivision (c) of this section or such individual ~~has an open case for a lawful arrest~~ within the past

two (2) years pled guilty to, or was convicted of a misdemeanor committed in the City of New York while newsgathering or within the past two (2) years pled guilty to, or was convicted of a felony committed in the City of New York in connection with the use of the newsgathering organization's Reserve Press Card and (2) the newsgathering organization's continued use of a Reserve Press Card would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

- **Period of Suspension. §16-06(b)(v)(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~~ criminal conviction (within the past two (2) years) for an offense committed in the City of New York based on the press credential holder's or Reserve Press Card authorized user's commission (within the past two (2) years in the City of New York) of a misdemeanor or felony, then the length of the suspension shall be the period of imprisonment that results from the recent (within the past two (2) years) conviction or guilty plea or six months, whichever is greater.
- **Revocation. §16-06(c)(i) Right to a hearing.** The Mayor's Office of Media and Entertainment is the only agency authorized to revoke a press credential. Summary seizure of a press credential is expressly prohibited and should such summary seizure occur, the press credential shall be promptly replaced by MOME. A press credential may not be suspended by the Mayor's Office of A press credential may not be revoked by the Mayor's Office of Media and Entertainment prior to a hearing and a determination that a revocation is proper based on the criteria set forth in paragraph (iii) of this subdivision (c).

Conclusion

The National Press Photographers Association, joined by the Committee to Protect Journalists, the Deadline Club, First Look Media's Press Freedom Defense Fund, the New York News Publishers Association, the New York Press Photographers Association, the Radio and Television Digital News Association, the Reporters Committee for Freedom of the Press, and the Society of Professional Journalists appreciate the opportunity to submit these comments regarding press credentials.

We hope that for the reasons stated above, our proposals will be given serious consideration and that their adoption and incorporation into the final rule will improve the credentialing process and provide long overdue standards of review and due process for press credential holders.

Respectfully submitted,

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