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

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NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON THE  
NEW YORK CITY POLICE DEPARTMENT (“NYPD”) PROPOSED RULE RELATING TO  
ISSUANCE OF PERMITS FOR TAKEOFF AND LANDING OF UNMANNED AIRCRAFT IN  
NEW YORK CITY (REFERENCE NUMBER: NYPD-18)

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Pursuant to Sections 435 and 1043(a) of the City Charter and  
section 3-10-126 (h) of the City Administrative Code

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**COMMENTS OF THE  
NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION  
JOINED BY  
AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS  
GETTY IMAGES (US), INC  
NEW YORK NEWS PUBLISHERS ASSOCIATION  
NEW YORK STATE BROADCASTERS ASSOCIATION  
NEWS MEDIA ALLIANCE  
NEWS MEDIA COALITION  
RADIO TELEVISION DIGITAL NEWS ASSOCIATION  
REUTERS NEWS & MEDIA INC.  
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS  
SOCIETY OF PROFESSIONAL JOURNALISTS**

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## **Introduction**

Founded in 1946 in New York City, the National Press Photographers Association (NPPA) represents thousands of staff photographers and freelance visual journalists nationwide and hundreds in the New York Metropolitan Area. Our members gather and report the news for publication by means of print, radio, television, Internet, and other forms of media. We respectfully submit the following Comment on the Proposed Rule (amending the New York City Police Department Rules, to add a new Chapter 24 to Title 38 of the Rules of the City of New York), certified on June 2, 2023, creating a procedure by which members of the public may submit applications to launch or land an unmanned aircraft, including a “drone,” within New York City as authorized by Sections 389(b) and 1043 of New York City Charter and section 10-126(h) of the Administrative Code, regarding “Issuance of Permits for Takeoff and Landing of Unmanned Aircraft in New York City,” Reference Number 2023 RG 034.

*Inter alia*, the proposed rule would:

- Add new § 24-01 defining key terms relevant to the permit application process.
- Add new § 24-02 requiring a permit to launch or land an unmanned aircraft, including a drone, within New York City, with limited exceptions.
- Add new § 24-03 establishing a permitting process for the take-off and/or landing of an unmanned aircraft, including a drone, within New York City, including an application that must be submitted at least 30 days before the earliest proposed take-off or landing, consisting of various elements, including:
  - Name and contact information of the applicant, and any proposed operator and visual observer;

- A description of the intended purpose or use of the unmanned aircraft;
  - The proposed date, time, and location of the take-off and landing of the unmanned aircraft;
  - Information regarding the specific geographic area where the flight of the unmanned aircraft will be conducted;
  - Information regarding the unmanned aircraft, such as manufacturer or model number;
  - Documentation of FAA authorization to operate an unmanned aircraft, any relevant waivers, and registration certificate for the unmanned aircraft;
  - A copy of the required insurance policies;
  - Copies of the applicants' data privacy and cybersecurity policies, or details regarding the applicant's data privacy and cybersecurity practices; and
  - Any additional information that the Department determines is necessary to make a determination as to whether a permit should be issued.
- Add new § 24-04 detailing procedures for the approval and disapproval of applications, the appeal procedure for disapproved applications, and the reasons for denial of a permit application.
  - Add new § 24-05 providing terms and conditions with which the permittee and any operator of the unmanned aircraft must comply.
  - Add new § 24-06 establishing minimum insurance requirements.
  - Add new § 25-07 establishing a civil penalty for launching or landing an unmanned aircraft within New York City without a permit, or for violating a term of a permit or any provision of Chapter 24.

## **Background**

We write on behalf of the National Press Photographers Association (NPPA) joined by the American Society of Media Photographers; Getty Images (US) Inc.; New York News Publishers Association; New York State Broadcasters Association; News/Media Alliance; News Media Coalition;<sup>1</sup> Radio Television Digital News Association; Reporters Committee for Freedom of the Press; Reuters News & Media Inc.; and the Society of Professional Journalists.

For the past several years, the NNPPA has held a Drone Journalism Leadership Summit in New York City with participation by the FAA, DHS, NYPD, FDNY and many news organizations along with first responders from around the country. These one-of-a-kind summits stress the safe integration of drones into the National Airspace. Given that individual journalists and news organizations are using drones with growing frequency and the high likelihood that they will encounter public safety personnel or first responders while covering matters of public concern, one of the major goals of these annual events is to develop and share critical information on evolving drone uses, newsroom policies and practices and in particular support a cooperative dialogue between law enforcement, first responders and journalists.

NPPA is also part of a News Media Coalition, a collective of nearly two dozen of

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<sup>1</sup> The News Media Coalition is a collective of news media organizations that promotes safe drone journalism practices and promotes development of government regulation that comports with the First Amendment. Coalition members include: Advance Publications, Inc., American Broadcasting Companies, Inc., American Society of Media Photographers, The Associated Press, Capitol Broadcasting Co., Gannett Co., Inc., Getty Images (US), Inc., Gray Television, Inc., National Press Photographers Association, NBCUniversal Media, LLC, News/Media Alliance, The New York Times Company, The E.W. Scripps Company, Sinclair Broadcast Group, Inc., TEGNA, Inc., TelevisaUnivision, Inc., and WP Company LLC.

the country's leading broadcast, print and digital news organizations and professional associations. That coalition actively participated in all aspects of rulemaking, policy, and consensus-building as the FAA's Advisory Rulemaking Committee (ARC), Department of Commerce, Federal Trade Commission, and Congress worked to implement the mandate of the 2012 FAA Modernization and Reform Act to safely integrate unmanned aerial vehicles into the National Airspace as well as implement a remote identification and tracking of unmanned aircraft systems (UAS).

As part of that coalition NPPA was also a stakeholder in meetings convened by the National Telecommunications and Information Administration (NTIA) to develop voluntary UAS privacy "best practices," which included overarching First Amendment protections for newsgathering when using drones.

NPPA was also an official observer to the Uniform Law Commission's attempt to draft a "Tort Law Relating to Drones Act," balancing the rights of property holders against those wishing to use drones in various ways, including newsgathering.

### **Analysis**

While we commend the City of New York's attempt to amend its anachronistic Avigation Law, we are deeply disappointed that the proposed rule, while not continuing the *per se* ban on drone take-offs and landings, still acts as a *de facto* one by unduly restricting entrance into NYC airspace to all but those who can meet its overly burdensome, costly, and unworkable requirements.

An analysis of the pertinent sections of the proposed rule illustrates just how problematic the requirements are, especially when viewed through the lens of drone use for newsgathering:

*§ 24-03 Applications.*

*(a) An application for a permit to take-off or land an unmanned aircraft within New York City must be submitted to the Department at least thirty days (30) prior to the proposed date of take-off or landing.*

Given the unknown and instantaneous nature of breaking news, such 30-day advance submission for a launch and/or landing permit still acts as an absolute bar for any journalist or news organization wishing to use a drone to report on matters of public concern. Even for those non-breaking news stories, having to submit an application 30-days in advance is an untenable requirement.

Additionally, the proposed rule fails to state a time period in which the City must approve or deny a properly submitted application, adding another insurmountable obstacle for those who wish to use a drone for newsgathering purposes.

*§ 24-03 Applications.*

*(b) Such application must be filed in a form and manner as prescribed on the Department's website. Applications must contain [15 specific requirements with additional subsections]*

While some of these requirements request basic information, others impose extreme obstacles, and there appears to be no process or guarantee as to how Personal Identifiable Information (PII) will be kept by the City to insure that an applicant is not harassed for their work or targeted for theft of their equipment. Coupled with the 30-day advance submission requirement, having to include so much information and supporting documentation adds to the overly burdensome nature of the proposed regulation. For example, most independent journalists work with news organizations—not the public—

and do not have their own “data policy” or “cyber security policy” as contemplated in subpart (b)(11). Instead, each news organization has security procedures, which are often confidential. This onerous requirement will be an obstacle to most journalists.

*§ 24-03 Applications.*

*(d) A non-refundable fee of \$150.00 shall accompany the application. The applicant shall pay such fee in a manner prescribed on the Department’s website.*

Even if the City were to revise some of its other proposed requirements, a non-refundable \$150.00 fee per application will put such permitting process beyond the economic reach of most, if not all, independent journalists wishing to use drones for newsgathering purposes. The fee is tantamount to an airspace access toll, which runs counter to FAA policy and does not have an equivalent nationwide. At minimum, the NPPA requests a fee waiver for journalists who apply for a permit for newsgathering purposes.

*§ 24-04 Approval/Disapproval Procedures.*

This proposed section sets forth a lengthy list of arbitrary and capricious reasons why the City may deny a permit application, and while allowing for an appeal, sets no timeframe under which the City must respond or rule on the appeal. Such onerous procedures create another almost insurmountable hurdle for those even considering participating in the proposed permitting application process.

Proposed section 24-04(b)(8) states that applications may be denied where “a location [is] designated as a take-off or landing site for an unreasonable length of time longer than 24 hours.” This proposed grounds for denial ignores the fact that drones flights are highly regulated by the FAA to changes in weather, which are often not able

to be planned the day beforehand, let alone 30-days in advance.

*§ 24-05 Permit Conditions.*

This proposed section sets forth another long list of reporting requirements, along with a provision to post notices and provide 48-hour advance notice to “each community board for the community district or districts where the unmanned aircraft is anticipated to capture or transmit still images, audio, or video, and each member of the City Council for the council district or districts.” Such requirements create another barrier that is all but impossible to overcome for those wishing to use drones to cover breaking news stories. It is also extremely troubling that the Department would require that a permittee provide so much PII to the general public, leaving them exposed to harassment and theft of equipment, not to mention interference at launch and/or landing sites.

This section also provides a mechanism by which the Department can suspend or revoke a permit, yet it fails to provide any due process for such revocation, or appeals process for such potentially arbitrary and capricious actions. There are no provisions or assurances that would prohibit NYPD Members of Service from engaging in summary suspension or revocation of permits in the same manner they did with press credentials.

*§ 24-06 Insurance.*

This proposed section sets forth in great detail and with extreme particularity the insurance requirements needed for a permit to be approved. It not only requires “Commercial General Liability (CGL) insurance and Drone Aviation Liability/Unmanned Aircraft Systems (UAS) coverage” but also that such policies meet certain ratings and includes certain high limits of coverage, also requiring that the policy list the City of New York as an additional insured. The section requires proof of Workers’



Compensation and Disability and Paid Family Leave insurance. All these requirements combine to make it economically impractical if not impossible for any news organization, let alone an individual journalist, to comply with them. It should be noted that we are not aware of any other jurisdiction that requires such overly burdensome insurance coverage.

*§ 24-07 Penalties.*

The proposed monetary penalties of \$250.00 for a first violation of the rules within a one-year period; \$500.00 for a second offense in a calendar year and \$1,000.00 for any third and subsequent violations make it almost more cost-efficient to ignore the rules and pay the fines or deal with any criminal charges. We are not proposing that the penalties should be increased but rather that the permit requirements be eased, the cost lowered, or the entire proposed rule needs to be revamped in order to induce participation and compliance.

In addition to the concerns with the specific proposed rules mentioned above, the NPPA also takes issue with the fact that the proposed rules make no distinction between different aircraft. For instance, an 8-oz. aircraft poses substantially different risks than a 50-lb. aircraft.

### **Comment**

As we stated at the outset, we commend the City for attempting to address the application to drone use of its 1948 Avigation law prohibiting “any person avigating an aircraft to take off or land, except in an emergency, at any place within the limits of the city other than places of landing designated by the department of transportation or the port of New York authority.” Unfortunately, the proposed rule does very little to lift that prohibition and in fact gives the NYPD more unbridled discretion as to who may be

granted a permit to operate a drone in NYC.

As the Department should be aware, any potential justification for the many onerous proposed requirements will be addressed by the FAA's Remote Identification (RID) rule which becomes effective on September 16, 2023, when all registered drones will be required to broadcast much of the information required by this proposed rulemaking.

As a federal judge determined in our case challenging certain Texas drone regulations the "use of drones to document the news by journalists is protected expression," and, "a law that regulat[es] this activity... implicates the First Amendment." *Nat'l Press Photographers Ass'n v. McCraw*, 594 F. Supp. 3d 789, 805 (W.D. Tex. 2022). This triggers strict scrutiny on any restrictions, requiring that such laws be narrowly tailored to serve a compelling government interest. *Id.* at 805, n.4. Contrary to the City Law Department's Certification pursuant to Charter §1043(D) the proposed rules ARE NOT "to the extent practicable and appropriate, [ ] narrowly drawn to achieve its stated purpose;" and DO NOT provide "a clear explanation of the rule and the requirements imposed by the rule."

Additionally, contrary to the City Mayor's Office of Operations Certification Analysis pursuant to Charter §1043(D), the proposed rule is not clearly "understandable and written in plain language . . ." and clearly DOES NOT minimize "compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule." Indeed, the compliance costs do little to enable the "important gains that may result from this new technology," noted in the proposed rules' Statement of Basis and Purpose.

The New York Police Department is a law enforcement agency and should not be in the business of regulating, permitting and licensing expressive activity that does not require police involvement (such as security or road closures). This is particularly important given that the NYPD has, in its past, used its power to regulate First Amendment activity by at times improperly seizing city-issued press credentials and arresting journalists for documenting police activity. It is for this reason that the NYPD no longer is allowed to issue press credentials and media wishing to engage in activity that requires a special press pass now may obtain one from the Mayor's Office of Media and Entertainment (MOME).

Moreover, the FAA's existing set of regulations already addresses many of the same issues contemplated by the proposed rules. For instance, FAA regulations already require:

- Remote pilot certification for any commercial use, which requires demonstration of aeronautical knowledge
- Registration of any drones to be used
- Compliance with the FAA's Remote Identification (RID) rule
- Preflight inspection of drones
- Accident reporting when an accident results in injury or property damage of over \$500.00

Absent special permission, the FAA already prohibits:

- Drone operation outside of Class G airspace or within 5 miles of an airport (without airspace authorization)
- Drone operation over people, unless they are directly participating in the

operation.

- Drone operation that is outside of the visual sight of the operator or an observer
- Reckless or careless drone operation

These rules already would prohibit drone operation on crowded New York streets without the closure of an area for exclusive use of a project. Finally, New York State law already protects the privacy of residents and others, and those laws are as effective when applied against a drone user as they would be against anyone.

### **Conclusion**

Aside from our fundamental concerns with the NYPD's potential regulation of drones, the proposed regulations are unconstitutional because the onerous permitting requirements completely foreclose the use of drones for most journalistic purposes. The proposed permitting provisions that would make it impractical if not impossible for a journalist—especially an independent journalist—to engage in drone journalism include, but are not limited to:

- The 30-day advance application requirement effectively forecloses any journalistic activity that involves breaking news, or even reasonably timely news or features. Even outside of breaking news, the vast majority of journalism is planned and carried out over a tight timeframe.
- The \$150.00 application fee is too expensive for most independent journalists to afford, particularly when compared to what they are paid per assignment.
- The liability and insurance requirements, the data and security policy disclosures, as well as the compliance with Worker's Compensation and paid family leave laws could be an obstacle to independent journalists. Even for journalists who

have existing general liability insurance, a requirement to revise existing insurance policies to name the City of New York as an additional insured, and to generate a new certificate of insurance for a single assignment, is too onerous. The labor and insurance requirements have no valid nexus to proper drone operation.

These overly burdensome conditions, rules and regulations mean that journalists—and most drone operators—simply will not comply. This surely defeats any valid goals that the city has. Despite the fact that the regulations directly regulate, and act as a prior restraint on, expressive First Amendment activity, the City has not identified any government interest that the regulations are serving. Neither have any of the public comments so far identified any concern that the public has raised that justifies the regulations.

We ask that the City simply modify the Avigation Law to exempt unmanned aircraft flight that complies with FAA regulations and keep the NYPD out of the business of regulating journalistic and other expressive activities.

The National Press Photographers Association and the other undersigned signatories appreciate the opportunity to submit these comments in opposition to the proposed rule for submitting permit applications to launch or land an unmanned aircraft, including a “drone,” within New York City.

Finally, we offer the service and vast expertise of our leadership and members should the NYPD wish any additional input and advice regarding their proposed rulemaking.

Respectfully submitted,

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On behalf of:

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