
BEFORE THE
THE MAYOR'S OFFICE OF MEDIA AND ENTERTAINMENT ("MOME")
NEW YORK, NY

NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON PROPOSED
AMENDMENT OF RULES RELATING TO PRESS CREDENTIALS AS REQUIRED BY
1043(D) OF THE NEW YORK CITY CHARTER

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,
NEW YORK NEWS PUBLISHERS ASSOCIATION,
NEW YORK STATE BROADCASTERS ASSOCIATION, INC.,
NEWS/MEDIA ALLIANCE,
RADIO TELEVISION DIGITAL NEWS ASSOCIATION,
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,
SOCIETY OF PROFESSIONAL JOURNALISTS.
STUDENT PRESS LAW CENTER**

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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 the New York News Publishers Association (NYNPA),⁴ the New York State Broadcasters Association, Inc.⁵ the Radio, the News/Media Alliance (N/MA)⁶ and Television Digital News Association (RTDNA),⁷ the Reporters Committee for Freedom of the Press,⁸ the Society of Professional Journalists

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 **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.

⁵ **New York State Broadcasters Association, Inc.**, represents more than 400 local radio and television stations licensed by the Federal Communications to communities in New York State. Membership includes most of the radio and TV stations licensed to serve New York City.

⁶ **News/Media Alliance (N/MA)** represents over 2,200 diverse publishers in the U.S. and internationally, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers who have printed news since before the Constitutional Convention. Its membership creates quality journalistic content that accounts for nearly 90 percent of daily newspaper circulation in the U.S., over 500 individual magazine brands, and dozens of digital-only properties. N/MA diligently advocates for newspapers, magazine, and digital publishers, on issues that affect them today.

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.

(SPJ),⁹ and the Student Press Law Center¹⁰ 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 January 17, 2024, implementing Sections 389(b) and 1043 of the City Charter and section 3-119.4 of the City Administrative Code regarding “Rules Relating to Press Credentials,” Reference Number: MOME 2023 RG 088. These proposed rules would add new paragraphs in and revise existing ones to Chapter 16 of Title 43 of the Rules of the City of New York.

NPPA generally commends MOME for these proposals especially for proposing to amend its rule regarding the return of expired Single Event Press Cards from one where that person was required to return an expired card in person to one which would allow the individual to return the card in person, by mail, or by courier or delivery service.

As for proposing to set a minimum age requirement for eligibility to receive a Standard Press Card or a Reserve Press Card; requiring an individual to be at least 18 years

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.

¹⁰ **Student Press Law Center (SPLC)** is a national, non-profit, non-partisan organization established in 1974 that works to promote, support, and defend the press freedom and freedom of information rights of high school and college journalists.

old to be eligible for a Standard Press Card or to be an authorized user of a Reserve Press Card, we are concerned that there are many minors who have a keen interest in journalism who would truly miss out on a wonderful opportunity to become involved in our profession under this proposed rule. It may also preclude young students from gaining the experience necessary to become better journalists as well as report on matters of public concern for their school or neighborhood publications.¹¹

While we believe that requiring a parent or legal guardian to provide their consent in writing for applicants who are under 18 years old and who are seeking to pre-register for or receive a Single Event Press Card is a commendable proposal, we do not agree that requiring such applicants who apply for Single Event Press Cards should have their access limited to “only to public events of a non-emergency nature or events sponsored by the City of New York that are open to members of the press,” for the same reasons as it would curtail their ability to gain experience covering breaking news events, which in itself could deny them the ability to meet the requirements when applying for a Standard Press Card.

The same concerns apply to the proposed requirement that “a parent, a legal guardian, or a responsible adult” must accompany “a Single Event Press Card holder who is under 16 years old during the entirety of the event for which the Single Event Press Card has been issued, even after access to the event has been granted.” Such a requirement may create an insurmountable obstacle for aspiring journalists whose parents must work or are otherwise unable to accompany them to such events.

¹¹ As an example, growing up in the Bronx, I was enrolled in junior and high school journalism classes between the ages of 12-16. I started college at 16 and was the photo editor of my school paper with a weekly circulation of 16,000 but under this proposed rule would not have been eligible for the (then Buffalo Police and Fire) press pass which I was issued.

While the new proposed rules provide that the Commissioner or the Commissioner's designee, in their discretion, may waive such requirement, or may impose such requirements for Single Event Press Card holders who are from 16 until 18 years old, we respectfully request that the Commissioner or the Commissioner's designee, be required to exercise their discretion subject to an articulable non-arbitrary standard of review.

Addressing the proposed amendment of MOME's rules setting forth the criteria for denial of an application for, or suspension of, a press credential, we support the alignment of criteria for the denial of an application with the criteria for suspension of a press credential, but we have concerns that the addition of criterion (H)¹² for the denial of a press credential would allow an application to be denied even if the applicant had completed an imposed period of suspension related to the conduct referred to in that provision. We recommend adding language that clarifies that this is not the intent.¹³

We again have concerns that the proposed rule change authorizing "MOME to suspend a press card for the misuse or misrepresentation of any press card issued by the City of New York," and the elimination of the limiting language, "while not acting in a newsgathering capacity,"¹⁴ will expand MOME's ability to exercise unbridled discretion to suspend a press credential beyond the legislative intent of the initially adopted criteria.

¹² See: (H) The applicant engaged in conduct set forth in paragraphs (B)-(F) of paragraph (iii) of subdivision (b) of this section.

¹³ For example, we recommend the following: (H) The applicant engaged in conduct set forth in paragraphs (B)-(F) of paragraph (iii) of subdivision (b) of this section, unless any period of suspension for such conduct has been completed.

¹⁴ See: (D) misused or misrepresented a press credential issued by the City of New York ~~while not acting in a newsgathering capacity;~~

Finally, we are comfortable with the proposed change authorizing MOME to *seek suspension* of a Reserve Press Card(s) if a newsgathering organization issues the Reserve Press Card(s) to an individual who does not meet all criteria required to receive a Reserve Press” (emphasis added), so long as MOME adheres to the procedure providing due process in these cases.

Background

Seventeen (17) years ago, spurred by a previous lawsuit,¹⁵ NPPA submitted 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.

On February 12, 2021, NPPA again 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 applications may be granted or

¹⁵ See: *Martinez-Alequin et al v. The City of New York et al*, Case No. 1:08-cv-09701 (SDNY 2007).

denied as well as when and how suspensions and revocations may take place. Additionally, the NPPA offers the service and vast expertise of its members should MOME wish any further input and advice regarding these rules.

Additional Recommendations

In addition to the recommendations above and below, we would urge MOME to consider establishing some form of recognition to enable those journalists holding press credentials from other jurisdictions (such as Chicago, Los Angeles, the State Department, or the White House) to be eligible to apply for the Standard Press Card without satisfying the requirements that they “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 . . . [of] 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 events sponsored by the City of New York that are open to members of the press.” 43 RCNY §16-03(e) and 43 RCNY §16-03(a)i. (emphasis added).

Rather, we ask that MOME waive (for those applicants possessing valid press credentials from other jurisdictions) the requirement that the submissions offered be only from New York City events. We make this request understanding that MOME has previously suggested that these journalists apply for the Single Event Press Card but given the speed at which events occur and decisions to cover them are made, it is almost impossible that journalists being assigned to such coverage will have the time and ability

to realistically make an application.

Alternatively, because the MOME Press Credentials are frequently recognized in those other jurisdictions, whereas the reverse is not true, we respectfully request that consideration be given to some form of recognition or reciprocity for press credentials from other jurisdictions that have been issued according to a valid, acceptable and verifiable vetting process.

As noted in comments we previously filed, NPPA remains concerned that the current criteria for suspensions and revocations based a press credential holder having “an open case for a lawful arrest for or was convicted of a misdemeanor while newsgathering or has an open case for a lawful arrest for or was convicted of a felony” 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.”¹⁶ The very “catch and release” charges we have seen NYPD continue to employ to chill the First Amendment rights of the press result in criminal consequences based on extremely subjective criteria that are far from lawful. 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.”¹⁷

¹⁶ *Nieves v. Bartlett*, 139 S. Ct. 1715, 1730 (2019), J. Gorsuch concurring.

¹⁷ 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). Also see: *In Re: New York City Policing During Summer 2020 Demonstrations*, 1:20-cv-08924-CM (S.D.N.Y. Sept. 5, 2023) (settlement ensuring the exercise of First Amendment rights, holding the NYPD accountable for its actions during demonstrations and

We again urge MOME to consider deleting the “lawful arrest” criteria and replace 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.

Because there is still no temporal or geographic limiting language in the section, NPPA renews its previously submitted recommendations that this provision be restricted to convictions or guilty pleas within the past two (2) years and only for illegal conduct taking place within New York City, as set forth below.

New material is underlined in blue

Deleted material is ~~strikethrough~~ in red

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

- Denial of Application. Criteria. **§16-06(a)(ii)(E)** The applicant (1) ~~has an open case for a lawful arrest~~ has 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 has within the past two (2) years pled guilty to, or was convicted of a felony committed within the City of New York; and (2) the Mayor's Office of Media and Entertainment determines, subject to a articulable non-arbitrary standard of review, 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

providing protection for the public and members of the press). Available at:
https://www.nyclu.org/sites/default/files/field_documents/1099-2_settlement_agreement.pdf

- Suspension. Criteria. **§16-06(b)(iii)(A)** ~~(1) has an open case for a lawful arrest~~ (1) has within the past two (2) years pled guilty to, or was convicted of a misdemeanor committed within the City of New York while newsgathering or has within the past two (2) years pled guilty to, or was convicted of a felony committed within 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~~ has within the past two (2) years pled guilty to, or was convicted of a misdemeanor committed within the City of New York while newsgathering or has within the past two (2) years pled guilty to, or was convicted of a felony committed within 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 within 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 within 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.

Conclusion

The National Press Photographers Association, joined by the Committee to Protect Journalists, the Deadline Club, the New York News Publishers Association, the New York Broadcasters Association, Inc. the News/Media Alliance, the Radio and Television Digital News Association, the Reporters Committee for Freedom of the Press, the Society of Professional Journalists and the Student Press Law Center 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 requisite standards of review and additional due process protections for press credential holders.

Respectfully submitted,

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