

**BEFORE THE CITY OF NEW YORK
MAYOR'S OFFICE OF MEDIA AND ENTERTAINMENT**

Comments on Proposed Rules on Press Credentials

Hearing Date: March 20, 2024

Comments By:

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Introduction

1. I am an attorney practicing Media Law in New York City as well as an accredited journalist, both for several decades. I have testified at or briefed every single city government hearing on press credentials since 2010. In addition, I have held many press credentials including the City Of New York Press Identification Card, the New York City Police Department's Working Press Card, Press Vehicle Card, Press Identification Card and College Press Card. My words and photographs have been published or transmitted by (to cite a brief sample) such news organizations as The New York Times, Daily News, New York Post, United Press International, NBC News, Fox News Channel, and many others. With this background, I submit for consideration the following comments.

Summary

2. On January 18, 2024, the New York City Mayor's Office of Media and Entertainment (MOME) made public a document entitled "Notice of Public Hearing and Opportunity to Comment on Proposed Rules" (hereafter the "Notice"). Among the changes to the existing Press Card system proposed are ones that would allow minors to receive official City of New York Press Cards for specific events as well as to expand the use of troublesome language in the grounds for suspension. These comments will address these two issues.

I. Children Should Not receive City of New York Press Cards

1. MOME's rules regarding Press Cards as codified in 43 RCNY Chapter 16, contain the following relevant provisions:

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 43 RCNY § 16-05 to a member of the press to cover a Single Event. 43 RCNY § 16-01

2. The proposed amendments to Sections 16-02 and 16-05, hereby incorporated by reference, would effectively create a “children's press card.”
3. Children do not belong behind police and fire lines. One of the most common uses for the Single Event Press Card is to cover parades. This card was created with the intent that a journalist from an organization, for example a neighborhood or ethnic newspaper, which did not ordinarily qualify for the standard press card, could, *for one day*, cover a major event of interest to their readership. Most journalists who carry the regular press card have not had a problem with this for the simple reason that those journalists who came to cover a parade were *adult professionals* and acted in a professional manner.
4. A news event, particularly a parade that has inherent dangers, is not a place for children. At a parade, journalists are crammed into a small place in front of the leading marchers, usually government officials. They are jostling for prime positions. Everyone wants the best angle for a picture or video or to get a microphone in front of an important official such as the mayor or governor. Worse yet, this space is moving. Many of us are walking *backwards*. And the police are in front of us with a rope line. This is not a place for children!
5. Here is photograph serving as an example of these conditions taken from the 2021 Columbus Day Parade:



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6. In order to take this picture of Gov. Hochul, I had to be directly in front of her, behind a police line, walking backwards, with many other journalists as well as City and State police ordering us about. Again, this is not a place for children and certainly not for their untrained parents or guardians.
7. MOME's proposed rules lower the age 18 minimum to create in effect *no minimum age* to obtain a Single Event Press Card. Further, to make it worse, the proposed changes say that if the child to whom MOME issues the single event card is *below 16*, he or she must be accompanied by a parent or other adult. In effect, that would mean *two* more people would now come on to the parade route. How will the police know to recognize the **chaperone** of this child journalist? I can think of no other word besides *chaperone*. And does this person also have the right to stand in our way?

8. What is more, MOME is not even saying that one chaperone is limited to accompanying only one child. Does this mean we will see *class trips* to cover news events with *one teacher* and a class of students? Or, what about a scout troop on a field trip?
9. There are *no rules* for these chaperones. You have rules for professional journalists that allow you to suspend or even revoke their press cards. How about the children? And how many Single Event Cards can each of them get per year?
10. Another use of the Single Event card is to attend a City press conference. Every room used for press conferences has a limited capacity, and sometimes even professional accredited journalists cannot get in. For example, the Mayor's Press Office noted, as they regularly do, in a release of his schedule yesterday:

On Tuesday, New York City Mayor Eric Adams and senior administration officials will hold an in-person media availability.

*This event is open press, however, **due to space limitations, TV cameras are not permitted in the Blue Room.*** [emphasis added]

Email from NYC Mayor's Press Office time stamped Mon

3/18/2024 8:47 PM.

11. MOME's proposed rules would mean that while CBS, NBC and ABC cannot send their professional accredited video journalists to cover the event *children and their chaperones* are welcome in what is already an overcrowded environment.
12. A news event should not be the subject of a class trip that will disrupt the professional journalists. It is not the time or place for dress up or "cosplay." It is a workplace environment.

13. Referring back to Section 16-01, *ibid.*, “A "Single Event" means a discrete activity that is an emergency, spot, or breaking news event. . .”

14. As provided further in the Rules:

[A] Single Event Press Card holder. . .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. [emphasis added] 43 RCNY § 16-02

15. It should be in the memory of everyone that in the spring and summer of 2020, New York City experienced multiple protests and civil unrest. See, for example, New York Times, May 31, 2020, *N.Y.C. Protests Turn Violent*¹ which noted:

As the night wore on, violent confrontations between [protesters](#) and police officers erupted throughout [Manhattan](#) and Brooklyn. Protesters threw glass bottles and trash at the police, while large groups of officers charged down streets, pushing crowds of demonstrators aside and using batons as they made arrests.

16. While professional journalists risked their personal safety to bring the public the news, this was no place for children.

17. Yet the proposed rule changes would allow MOME to issue them Single Event Press Cards.

¹ <https://www.nytimes.com/2020/05/31/nyregion/nyc-protests-george-floyd.html>, retrieved March 20, 2024.

18. I also understand that in one set of written comments another commenter is waxing nostalgic to days in high school and even college (although outside New York City). Allow me to respond.
19. I attended Brooklyn College of the City University of New York. I, too, was interested in journalism. From the day before my freshman classes began, I joined the school newspaper (then called “Kingsman”). I worked on every single issue until I graduated and was awarded First Prize in Journalism and the Journalism Medal.
20. Sometime during this period, I was issued the New York City Police Department College Press Card which identified me as a college journalist although *it did not allow me to cross police and fire lines.*
21. If MOME wishes to restore the College Press Card, under the same terms and conditions, I would probably have no objection. However, I note that in the hearing held today as well as in the Notice, no individual or organization has been publicly identified as seeking this change. This begs the question: **Who wants children to have press cards?**
22. While having an *interest* in journalism is laudable, that is no reason for MOME to issue a professional credential. Using Law as an example, someone can be interested in being a lawyer, but they would have to wait until they graduate college, enroll in law school, finish two semesters and then sign up for an approved program of limited representation under supervision. (See Judiciary Law §§478, 484.)

II. The Proposed Changes to Section 16-06 Should Not be Enacted Because of Vagueness

23. Section 16-06 of MOME’s Rules, if amended, would state in relevant part:

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:

. . .

(D) misused or misrepresented a press credential issued by the City of New York; or

(E) conducted an unauthorized transfer or assignment of such credential;

24. I have testified and written several times regarding the vagueness of these words going back to when the NYPD first proposed and enacted similar language in then 38 RCNY Chapter 11.
25. I am an attorney duly admitted before the Courts of the State of New York and I cannot advise any journalist what the meaning of “misused or misrepresented a press credential issued by the City of New York” is. Despite repeated inquiries, MOME itself has yet to provide me or, to the best of my knowledge, anyone else, with a definition.
26. First, how exactly does one “misuse a press card?” I have no idea.
27. Second, and even better, how can one “misrepresent a press credential?” Since MOME is the sole agency in charge of the design of this card, it behooves the agency to take a closer look at its design. As noted in previous hearings and comments, the front of this card contains the word “Press” **five (5)** times! To make things worse, two of these times are in 36 pt. (1/2 inch) bold-face type. How can anyone say this is other than a press card? This rule is preposterous on its face.
28. Next, we come to the “unauthorized transfer or assignment of such credential.” Again, using the ordinary legal meaning of these words, how does one “transfer” a press card especially a card that, like a driver’s license, has the picture and name of the holder on its face?
29. Next, “assignment” is equally puzzling. One can assign a contract or a lease, for example, but how precisely can one assign a press card?

30. If a lawyer cannot answer these questions, then how can a journalist know what is prohibited?
31. Fortunately, the Supreme Court has given us guidance in dealing with rules that prohibit things we cannot figure out. Justice Sutherland wrote:

[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. [Internal citations omitted] [Connally v. General Constr. Co., 269 U.S. 385, 391](#), (1926)

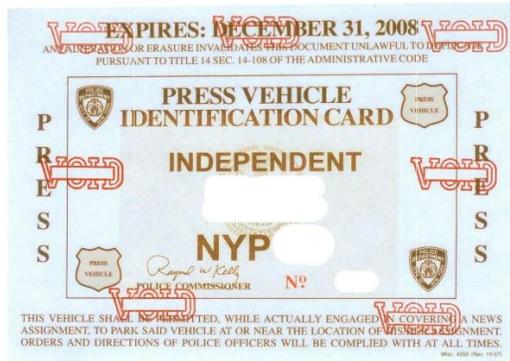
32. The evil that the Void for Vagueness Doctrine seeks to prevent is that when a term in a rule has no reasonable meaning, then those who enforce that rule can decide it means whatever they wish. Both of these paragraphs therefore should not be *amended*. They should be *deleted*.

III. Supplementary Recommendations for MOME

33. Under Local Law 46 of 2021, the Administrative Code of the City of New York was amended to create Section 3-119.4. It provides in part:

c. The mayor's office of media and entertainment shall issue press cards, reserve press cards and single event press cards *and may establish by rule additional types of press credentials*. [emphasis added]

34. For more than 50 years up until about January 1, 2010, there existed a parking permit issued by the NYPD for duly accredited members of the press that looked like this:



35. For reasons that have never been made public, the NYPD, with no notice and no opportunity to be heard, denied renewal of these cards to every journalist who had one.
36. This action, of questionable legality, produced a hardship to the press in that the only parking spaces available for press use are the NYP (New York Press) zones established by the Department of Transportation. These spaces, I am informed and believe, number less than 150 for the entire city. Indeed, the borough of Staten Island has no such spaces.
37. Today, **the news business is the only major business in the city that does not have commercial parking privileges.**
38. When the NYP license plate was created by the New York State Department of Motor Vehicles on or about 1952, it was never intended to reduce the parking available to journalists. On the contrary, it was done to make it easier for the press to access spot news scenes such as fires since the police could spot a news vehicle from a distance. The press corps then, as now, was considered a business.
39. Today, unfortunately, the Department of Transportation refuses to acknowledge this fact and bars the press (by means of police enforcement) from using the thousands of spaces reserved for “commercial” vehicles. This results in ludicrous situations such as when

there is a press conference at 250 Broadway (the offices of the City Council). Accredited journalists are prohibited from parking in front of the building. But the truck delivering office supplies may do so. After all, it has commercial plates.

40. Further, MOME continues to engage in the egregious practice of “giving away” NYP parking spaces to production companies that receive its film and television permits.

41. Here, for example, is a scene that took place on West 51st Street in Manhattan last week.



42. This No Parking sign identifies a zone where parking is prohibited except for the press with vehicles that are duly registered. Indeed, one of the few exceptions to this regulation is for bona fide holders of the city’s Parking Permit for People with Disabilities.

43. However, this apparently does not concern the MOME officials who assign press parking to other non-press users.

44. This is a close-up of the yellow sign affixed to the NYP zone pole:



45. As clearly indicated, MOME, through its Office of Film, Theatre and Broadcasting, regularly expropriates press parking spaces and turns them over for what is colloquially called “movie shoots.”

46. On November 23, 2021, I testified at MOME’s own hearing:

MOME has a history of favoring film and television productions over journalists whether it be on access to public streets or other situations. To cite a recent example, on Sunday, October 10, your agency allowed a production company to take over the entire New York Press parking zone on Sixth Avenue and 51st Street even

though they were not shooting that day. Who was shooting? The many still photographers and videographers who were covering the Columbus Day Parade and for whom these spaces were reserved.

47. This is the exact same location as I spoke about then. Is MOME listening?
48. Fortunately, there is an easy way to fix this problem. MOME should reinstate the Press Vehicle Card. In that way, working journalists will have space to park even when NYP spaces are used for the film business.
49. The changing business models of journalism has resulted in fewer journalists on the payrolls of news organizations. Indeed, most photojournalists are freelancers and pay all expenses including parking and tickets out of pocket.
50. Finally, I oppose any form of “equivalency” to be granted by MOME to the holders of press cards from other locations. Under the federal republic form of government that the United States has, there are various local and state rights. What may qualify for press credentials in Los Angeles or Dallas or Chicago may be different than what is required under 43 RCNY Chapter 16. Further, there is nothing in the law that mandates that the NYPD or indeed any agency, accept any credential other than the one issued by MOME. Should anyone be interested in negotiating some sort of “reciprocity agreement” with other cities and states, they are free to do so.

CONCLUSION

51. I urge MOME to rescind the proposed rules allowing persons under the age of 18 to receive Press Cards and to delete the objectional paragraphs cited above. I further urge MOME to restore the Press Vehicle Card, to stop assigning NYP parking to its permit holders and to act favorably on all comments contained herein.

Dated: Brooklyn, New York
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