



## **New York Press Photographers Association, Inc.**

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I'm Bruce Cotler, President of the New York Press Photographers Association. I am also an award winning photojournalist, with 30 plus years of experience; I am speaking to you on behalf of the New York Press Photographer's Association— the organization that represents the photojournalists in the New York City area. I'm testifying today to make clear that the NYPPA opposes the proposed MOME initiative to grant press cards to minor children 15 and older; due to the volatile nature of large news events, not only are they a place of considerable danger for children, but also large news events simply aren't a place for minors and their adult chaperones who have no experience with the professional decorum of the press.

I should know because I have attended many breaking news events over the years, and one that particularly comes to mind is an anti-migrant protest, which I was present at last year that turned violent on a dime— myself, and a female photographer had to be rescued by the NYPD, because the protestors surrounded us and were becoming violent. These hostile protestors had targeted us because we were journalists covering the event. I also covered the George Floyd protests, in which I had to wear a ballistic vest and helmet for my safety; even though I had them on, I was pelted with objects thrown from the angry crowd of protestors.

If these single use press cards were in affect for minor children at the time and said children were in attendance, they would undoubtedly have been targeted or injured— as several professional journalists have been in the past. It's also not possible for minors or their inexperienced guardians to know how to react to or handle these types of crises, nor how to handle a situation with law enforcement if police need to be involved. We were not asked our opinion for this misguided proposal, and the New York Press Photographer's Association disavows any attempts to grant these types of press cards to minor children due to the inherent danger it would present them, their chaperones, and the members of the press.

Thank you for your time and your consideration.

Sincerely,

Bruce Cotler

President New York Press Photographers Association

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

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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

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

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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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March 20, 2024

## Introduction

The National Press Photographers Association (NPPA),<sup>1</sup> joined by the Committee to Protect Journalists (CPJ),<sup>2</sup> the Deadline Club,<sup>3</sup> the New York News Publishers Association (NYNPA),<sup>4</sup> the New York State Broadcasters Association, Inc.,<sup>5</sup> the Radio, the News/Media Alliance (N/MA)<sup>6</sup> and Television Digital News Association (RTDNA),<sup>7</sup> the Reporters Committee for Freedom of the Press,<sup>8</sup> the Society of Professional Journalists

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<sup>1</sup> **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.

<sup>2</sup> **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.

<sup>3</sup> **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.

<sup>4</sup> **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.

<sup>5</sup> **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.

<sup>6</sup> **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.

<sup>7</sup> **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.

<sup>8</sup> **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),<sup>9</sup> and the Student Press Law Center<sup>10</sup> 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

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<sup>9</sup> **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.

<sup>10</sup> **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.<sup>11</sup>

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.

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<sup>11</sup> 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)<sup>12</sup> 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.<sup>13</sup>

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,"<sup>14</sup> will expand MOME's ability to exercise unbridled discretion to suspend a press credential beyond the legislative intent of the initially adopted criteria.

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

<sup>13</sup> 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.

<sup>14</sup> 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,<sup>15</sup> 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

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<sup>15</sup> 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.”<sup>16</sup> 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.”<sup>17</sup>

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

<sup>17</sup> 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

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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](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,

NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION

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

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**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:





©2021 Robert Roth

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. MOMÉ'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 MOMÉ 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*<sup>1</sup> 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.

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<sup>1</sup> <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*

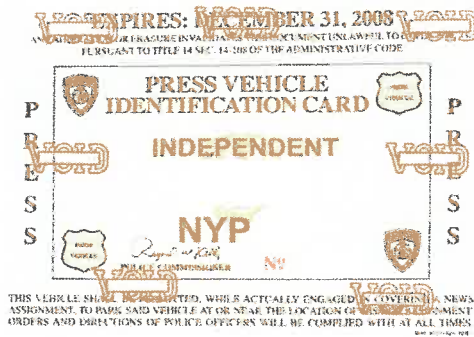
*(E) conducted an unauthorized transfer or assignment of such credential;*

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.

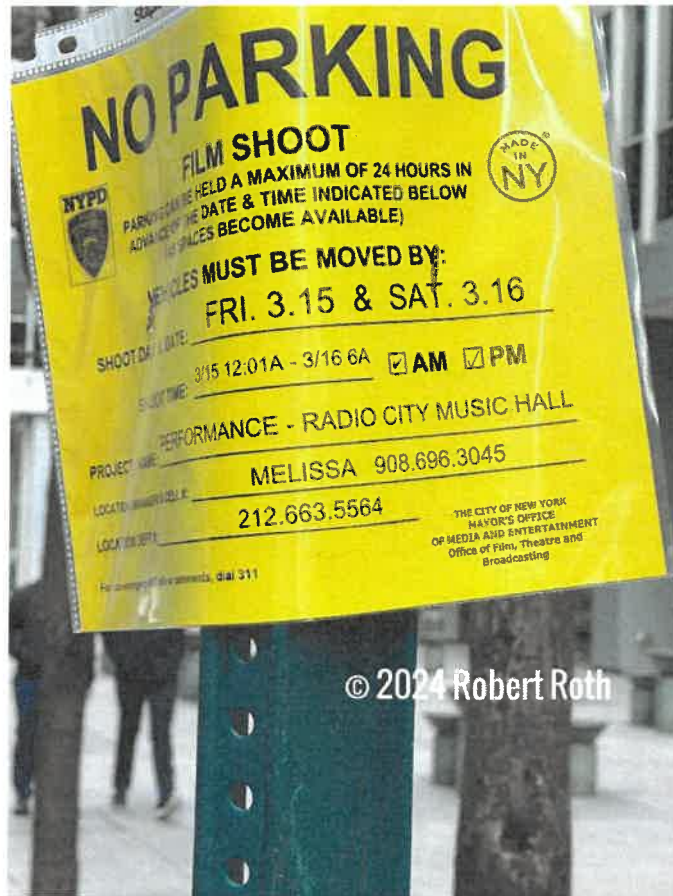
41. Here, for example, is a scene that took place on West 51st Street in Manhattan last week.



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  
March 20, 2024

Respectfully submitted,

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