File #: Int 1033-2015, **Version:** *

Int. No. 1033

By Council Members Palma, Chin, King, Koo, Koslowitz, Mendez, Rose and Johnson

A Local Law to amend the administrative code of the city of New York, in relation to requiring retailers that sell smart phones in the city of New York to install a technological solution to deter theft.

Be it enacted by the Council as follows:

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 9 to read as follows:

CHAPTER 9:
SMART PHONE ANTITHEFT TECHNOLOGY

§20-926 Definitions. When used in this chapter, the following terms shall be defined as follows:

"Smart phone" means a cellular phone that can: (1) be used for voice communication; (2) connect to the Internet; and (3) access and use mobile software commonly known as "apps." The term "smart phone" does not include a laptop computer, a tablet device, or a device that only has electronic reading capacity.

"Essential features" of a smart phone include the ability to use the device for voice communications, the ability to connect to the Internet and the ability to access and use mobile software applications commonly known as "apps." The term "essential features" does not include any functionality needed for the operation of the antitheft technological solution described in section 29-927. The term "essential features" also does not include the ability of a smart phone to access emergency services by calling or texting 911 or the ability of a smart phone to receive wireless emergency alerts and warnings.

"Hard reset" means restoration of a smart phone to the state it was in when it left the factory in which it was manufactured, and refers to any act of returning a device to that state, including processes commonly

referred to as a factory reset or a master reset.

"Sold in New York city" means that the smart phone is sold at a retail location in New York city, or that the smart phone is sold and shipped to an end-use consumer at an address in New York city. The term "sold in New York city" does not include a device that is resold in New York city on the secondhand market or that is consigned and held as collateral on a loan. For purposes of determining the date that a smart phone is sold in New York city, a smart phone is sold in New York city on the date of sale.

§20-927 Antitheft technology for smart phones sold in New York city. a. Any smart phone that is sold in New York city after January 1, 2016, shall include an antitheft technological solution that can render the essential features of the device inoperable to an unauthorized user when the device is not in the possession of the rightful owner. The antitheft technological solution shall be reversible, so that if the rightful owner obtains possession of the device after the essential features of the device have been rendered inoperable, the operation of those essential features can be restored by the rightful owner or his or her authorized designee. An antitheft technological solution may consist of software, hardware or a combination of both software and hardware, but shall be able to withstand a hard reset, and, when enabled, shall prevent reactivation of the device on a wireless network except by the rightful owner or his or her authorized designee. No smart phone may be sold in New York city unless, during the activation and registration process, the smart phone's default setting prompts the user to enable the antitheft technological solution.

b. The antitheft technological solution required by subdivision a shall be designed in a manner that permits the rightful owner of the smart phone to affirmatively elect to disable the antitheft technological solution at the point of sale, during the activation and registration process, or anytime thereafter.

§20-928 Penalties. Any person selling a smart phone in New York city in violation of this chapter shall be subject to a civil penalty of not less than five hundred dollars, nor more than two thousand five hundred dollars, per device sold in New York city.

§20-929 Compatibility with state and federal law. Nothing in this chapter requires an antitheft

technological solution that is incompatible with, or renders it impossible to comply with, obligations under state and federal law related to any of the following: (1) the provision of emergency services through the 911 system, including text to 911, bounce-back messages, and location accuracy requirements; (2) participation in the wireless emergency alert system; or (3) participation in state and local emergency alert and public safety warning systems.

§ 2. This local law shall take effect immediatel.

JCH
LS# 1091
7/28/14