



COUNCIL OF THE CITY OF NEW YORK

April 22, 2019

To: Council Member Brannan
From: Bill Drafting Division
Re: A local law to amend the administrative code of the city of New York, in relation to a prohibition on sharing location data with third parties

The attached material was prepared at your request. If this material is to be introduced, please indicate below that you have received and approved the draft and please then forward four copies to Corey Johnson, Speaker, City Hall, along with a plain language summary if a bill was prepared.

If you would like to amend or alter the draft, please contact Agatha Mavropoulos at (212) 482-5490.

LS #9645

Robert Newman
Counsel to the Speaker

Agatha Mavropoulos
Legislative Attorney

Wesley Jones
Deputy Director

Speaker Johnson: Please introduce this legislation. Unless initialed here ____, my approval is not needed for co-prime sponsorship.

Council Member Brennan

Int. No.

By Council Member Brannan

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to a prohibition on sharing location data with third parties

Be it enacted by the Council as follows:

1 Section 1. Title 23 of the administrative code of the city of New York is amended by adding
2 a new chapter 13 to read as follows:

3 CHAPTER 13

4 PROHIBITION ON SHARING LOCATION DATA

5 § 23-1301 Definitions.

6 § 23-1302 Prohibition on sharing location data.

7 § 23-1303 Exceptions.

8 § 23-1304 Enforcement.

9 § 23-1305 Penalties.

10 § 23-1306 Private right of action.

11 § 23-1307 Rulemaking.

12 § 23-1301 Definitions. As used in this chapter, the following terms have the following
13 meanings:

14 Authorized use. 1. The term “authorized use” means the sharing of a customer’s location data:

15 (a) For the purpose of providing a service explicitly requested by such customer;

16 (b) Exclusively for the purpose of providing a service explicitly requested by such customer;

17 and

18 (c) Where such data is not collected, shared, stored or otherwise used by a third party for any
19 purpose other than providing a service explicitly requested by such customer.

20 2. Such term does not include any instance in which a customer’s location data is shared in
21 exchange for products or services.

1 Customer. The term “customer” means a current or former subscriber to a
2 telecommunications carrier or a current or former user of a mobile application.

3 Location data. The term “location data” means information related to the physical or
4 geographical location of a person or the person’s mobile communications device, regardless of the
5 particular technological method used to obtain this information.

6 Mobile application. The term “mobile application” means a software program that runs on
7 the operating system of a mobile communications device.

8 Mobile application developer. The term “mobile application developer” means a person
9 that owns, operates or maintains a mobile application and makes such application available for the
10 use of customers, whether for a fee or otherwise.

11 Mobile communications device. The term “mobile communications device” means any
12 portable wireless telecommunications equipment that is utilized for the transmission or reception
13 of data, including location data, and that is or may be commonly carried by or on a person or
14 commonly travels with a person, including in or as part of a vehicle a person drives.

15 Share. The term “share” means to make location data available to another person, whether
16 for a fee or otherwise.

17 Telecommunications carrier. The term “telecommunications carrier” means a service
18 offered to the public for a fee that transmits sounds, images or data through wireless
19 telecommunications technology.

20 § 23-1302 Prohibition on sharing location data. a. It is unlawful for a mobile application
21 developer or a telecommunications carrier to share a customer’s location data where such location
22 data was collected while the customer’s mobile communications device were physically present
23 in the city.

1 b. It is unlawful for a person who receives location data that is shared in violation of
2 subdivision a of this section to share such data with any other person.

3 c. Each instance in which a mobile application developer, telecommunications carrier or
4 other person shares a customer's location data with another person in a manner prohibited by this
5 section constitutes a separate violation of this section.

6 § 23-1303 Exceptions. a. Section 23-1302 does not apply to:

7 1. Information provided to a law enforcement agency in response to a lawful process;

8 2. Information provided to an emergency service agency responding to a 911
9 communication or any other communication reporting an imminent threat to life or property;

10 3. Information required to be provided by federal, state or local law; or

11 4. A customer providing the customer's own location data to a mobile application or
12 telecommunications carrier to be shared for an authorized use.

13 b. Nothing in this section shall be construed as (i) requiring the provision of location data
14 to law enforcement agencies or (ii) creating any stand-alone entitlement to location data for law
15 enforcement agencies.

16 § 23-1304 Enforcement. The department of information technology and
17 telecommunications shall enforce the provisions of this section.

18 § 23-1305 Penalties. a. Except as provided in subdivision b, any person who violates
19 section 23-1302 shall be subject to a civil penalty of \$1,000 for each such violation.

20 b. Where a person commits multiple violations of subdivisions a or b of section 23-1302
21 on the same day, the maximum civil penalty assessed against such person for all violations
22 occurring on such day shall be a cumulative penalty of \$10,000 per person whose location data
23 was shared unlawfully.

1 § 23-1306 Private right of action. a. Any customer whose location data has been shared in
2 violation of this chapter may bring an action in any court of competent jurisdiction. If a court of
3 competent jurisdiction finds that a person has violated a provision of this chapter, the court may
4 award: (i) actual damages, computed at a rate of \$1,000 per violation up to \$10,000 per day; and
5 (ii) reasonable attorney’s fees and costs incurred in maintaining such civil action.

6 b. The private right of action provided by this section does not supplant any other claim or
7 cause of action available to a customer under common law or by statute. The provisions of this
8 section are in addition to any such common law and statutory remedies.

9 c. Nothing in this chapter shall be construed as creating a private right of action against the
10 city or any agency or employee thereof.

11 § 23-1307 Rulemaking. The commissioner of information technology and
12 telecommunications may promulgate and amend rules in furtherance of the administration of this
13 chapter.

14 § 2. This local law takes effect 120 days after it becomes law, provided that where the
15 provisions of section 23-1302 of the administrative code of the city of New York, as added by
16 section one of this local law, cannot be applied consistently with currently applicable contracts,
17 such provisions shall only apply with respect to contracts entered into or renewed after the effective
18 date of this local law.

AM
LS #9645
3/27/19

Plain Language Summary

Current Introduction Number:

Not assigned yet

Prime Sponsors:

Council Member Brannan

Bill Title:

A local law to amend the administrative code of the city of New York, in relation to a prohibition on sharing location data with third parties

Bill Summary:

This plain language summary is for informational purposes only and does not substitute for legal counsel. For more information, you should review the full text of the bill, which is available online at legistar.council.nyc.gov.

This bill would prohibit telecommunications carriers and mobile applications from sharing a user's location data with another person, if the location is within New York City. This bill would also prohibit anyone who receives such location data from sharing it with another person. The penalty for violating this prohibition would be \$1,000 per violation, with a maximum penalty of \$10,000 per day per person whose location data was unlawfully shared. The Department of Information Technology and Telecommunications would enforce this prohibition. This bill would also create a private right of action against telecommunications carriers and mobile application developers who violate this prohibition.

Effective Date:

120 days after it becomes law

Legislative Impact:

- Agency Rulemaking Required:** Is City agency rulemaking required?
- Report Required:** Is a report due to Council required?
- Sunset Date Included:** Does the legislation have a sunset date?
- Council Appointment Required:** Is an appointment by the Council required?
- Other Appointment Required:** Are other appointments not by the Council required?

Note: In the full bill text online at legistar.council.nyc.gov, language in proposed consolidated laws that is enclosed by [brackets] would be deleted, and language that is underlined would be new. Language in proposed unconsolidated laws, in contrast, will not have brackets or underlining because it would be entirely new. Consolidation means that the law is placed in the New York City Charter or Administrative Code.