
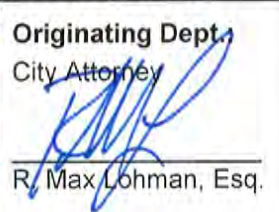
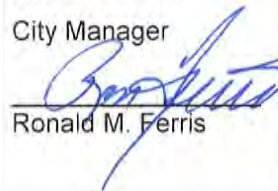


**CITY OF PALM BEACH GARDENS
CITY COUNCIL
Agenda Cover Memorandum**

**Meeting Date: March 1, 2018
Ordinance 2, 2018**

Subject/Agenda Item: Amending Chapter 18. Businesses. at Article II. Peddlers and Solicitors. in order to adopt the regulations pertaining to Home Solicitation Sales as contained in Chapter 501, *Florida Statutes*.

- Recommendation to APPROVE**
 Recommendation to DENY

<p>Reviewed by:  City Attorney R. Max Lohman, Esq.</p>	<p>Originating Dept.: City Attorney  R. Max Lohman, Esq.</p>	<p>Costs: \$ <u>0</u> (Total) \$ _____ Current FY</p>	<p>Council Action: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/ Conditions <input type="checkbox"/> Denied <input type="checkbox"/> Continued to:</p>
<p>Submitted by:  City Attorney R. Max Lohman, Esq.</p>	<p>Advertised: Date: Paper: <input checked="" type="checkbox"/> Not Required</p>	<p>Funding Source: <input type="checkbox"/> Operating <input type="checkbox"/> Other Contract/Agreement: Effective Date: <u>N/A</u> Expiration Date: <u>N/A</u> Budget Acct.#: N/A</p>	<p>Attachments: • Ordinance 2, 2018</p>
<p>Approved by: City Manager  Ronald M. Ferris</p>	<p>Affected parties <input type="checkbox"/> Notified <input checked="" type="checkbox"/> Not required</p>		

BACKGROUND: Under the current City Code of Ordinances, any individual who wants to participate in Home Solicitation sales within the City is required to be registered (photographed and fingerprinted) by the City Police Department. Upon registration, the City Police Department is then required to issue an identification card to that individual. The Florida Legislature has enacted provisions in Chapter 501, *Florida Statutes*, that provides a county-wide registration process for Home Solicitation sales administered through the Office of the County Clerk of Court. The City Police Department believes that the adoption of the county-wide registration process would benefit the public as it would be a more streamlined process and would result in a better use of City resources. The proposed changes to Chapter 18. Businesses. at Article II. Peddlers and Solicitors. include the following:

ARTICLE II. – PEDDLERS AND SOLICITORS HOME SOLICITATION SALES.

Sec. 18-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Home solicitation sale means a sale, lease, or rental of consumer goods or services with a purchase price in excess of \$25 which includes all interest, service charges, finance charges, postage, freight, insurance, and service or handling charges, whether under single or multiple contracts, made pursuant to an installment contract, a loan agreement, other evidence of indebtedness, or a cash transaction or other consumer credit transaction, in which:

- (1) The seller or a person acting for him or her engages in a personal solicitation of the sale, lease, or rental at a place other than at the seller's fixed location business establishment where goods or services are offered or exhibited for sale, lease, or rental, and
- (2) The buyer's agreement or offer to purchase is given to the seller and the sale, lease, or rental is consummated at a place other than at the seller's fixed location business establishment, including a transaction unsolicited by the consumer and consummated by telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services. It does not include a sale, lease, or rental made at any fair or similar commercial exhibit or a sale, lease, or rental that results from a request for specific goods or services by the purchaser or lessee or a sale made by a motor vehicle dealer licensed under Section 320.27, *Florida Statutes*, which occurs at a location or facility open to the general public or to a designated group.

~~*Peddler* means any person, whether a resident of the city or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car, or other vehicle or conveyance. Anyone who solicits orders and, as a separate transaction, makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a "peddler." The word "peddler" shall include the words hawker and huckster.~~

~~*Solicitor* means any individual, whether resident of the city or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares, and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not the individuals have, carry, or expose for sale a sample of the subject of the sale or not. This definition shall include any person who for himself or for another person hires, leases, uses, or occupies any building, structure, tent, railroad box car, boat, hotel room, lodginghouse, apartment, shop, or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery. The term "solicitor" shall include the term "canvasser."~~

Sec. 18-32. ~~Registration; fingerprinting and photographing~~ Permit required.

~~Each person who is employed, or who performs services in any capacity within the city as a peddler or solicitor or intends to conduct home solicitation sales as defined in this Article within the city shall register obtain pursuant to Chapter 501, *Florida Statutes*, with a valid home solicitation sales permit from the Palm Beach County Clerk of Circuit Court chief of police of the city his name, description, date of birth, last place of employment, if any, and shall also be fingerprinted and photographed by or under the direction of the chief of police prior to engaging in the described occupations.~~

Sec. 18-33. ~~Registration fee~~ Display of permit.

~~All persons required to register under this article shall pay the sum which is on file in the city clerk's office to the police department for the defraying of cost of fingerprinting and photographing. Every person engaged in home solicitation sales shall carry pursuant to Chapter 501, *Florida Statutes*, a valid permit at all times while engaged in home solicitation sales within the city and shall display the same to all prospective buyers before initiating the solicitation of a sale, lease or rental.~~

Sec. 18-34. Identification cards Exclusions.

~~Identification cards shall be issued by the chief of police to all persons after they have been duly registered under this article, which shall be carried by those persons at all times during which they shall be engaged in the occupation. Identification cards shall be issued for a period of two years only. Upon expiration of the two-year period, each person shall be required to reregister in the manner as set forth in section 18-32 and receive a new identification card with an expiration date two years hence. Identification cards shall not be issued until the fingerprints of each registrant has been forwarded by the chief of police for investigation and a report obtained therefrom. Exclusions from this article shall be pursuant to Chapter 501, Florida Statutes.~~

Sec. 18-35. Employment of unregistered persons prohibited Penalty.

~~It shall be unlawful for any person to employ any person that is required to secure an identification card unless the person has prior to such employment obtained an identification card as required in this article. In accordance with Chapter 501, Florida Statutes, the Attorney General or state attorney may institute proceedings to enjoin any person found to be violating the provisions of Chapter 501, Florida Statutes.~~

Sec. 18-36. Exemptions Duties of police officers.

~~—The only persons excepted from the provisions of this article shall be licensed physicians, dentists, ordained clergymen, and persons who deliver newspapers to private residences within the city provided the newspapers are of general circulation. It shall be the duty of any police officer of the city to require any person seen conducting home solicitation sales to produce the required permit and certificate.~~

Sec. 18-37. Penalty Hours of operation.

~~In accordance with section 2-186 et seq. and F.S. § 162.09, the code enforcement board of the city is hereby granted jurisdiction for enforcement of this article and shall have the power to impose a fine in the maximum sum of \$250.00 per day with each day the violation occurs constituting a separate offense on any person or corporation who violates the provisions of this article.~~

- ~~(1) No person shall engage in home solicitation sales except from 9:00 a.m. to 9:00 p.m.~~
- ~~(2) It shall be unlawful for any person to conduct home solicitation sales any order for the sale of any goods, wares, merchandise, periodical, or publication or to sell or offer for sale any goods, wares, or merchandise, with the exception of milk, medicine, and newspapers, from house to house, between the hours of 9:00 p.m. and 9:00 a.m.~~

Sec. 18-38. Interstate commerce.

~~Notwithstanding any other provisions of this article to the contrary, any solicitor within the city dealing in interstate commerce and who is not required to obtain a city occupational license as provided in section 66-36 et seq. shall only be required to obtain an identification card to act as a solicitor in accordance with the terms and provisions of this article.~~

~~In accordance with section 2-186 et seq. and F.S. § 162.09, the code enforcement board of the city is hereby granted jurisdiction for enforcement of this article and shall have the power to impose a fine in the maximum sum of \$250.00 per day with each day the violation occurs constituting a separate offense on any person or corporation who violates the provisions of this article.~~

Sec. 18-39. Duties of police officers.

~~(a) It shall be the duty of any police officer of the city to:~~

- ~~(1) Require any person seen soliciting or peddling, and who is not known by that officer and who is required to be licensed as provided in section 66-36 et seq. to produce his license;~~
- ~~(2) Enforce the provisions of this article against any person found to be violating the article.~~

~~(b) The chief of police shall keep a record of all convictions for violations of this article and shall maintain a record for each identification card issued and record the reports of violations in such records.~~

Sec. 18-40. Revocation of identification card; grounds.

~~Identification cards issued under the provisions of this article may be revoked by a board consisting of the mayor, city manager, and the chief of police, after notice and hearing, for any of the following causes:~~

- ~~(1) Fraud, misrepresentation, or false statement contained in the application;~~
- ~~(2) Fraud, misrepresentation, or false statement made in the course of carrying on his business as solicitor or peddler;~~
- ~~(3) Any violation of this article;~~

- (4) — Conviction of any crime or misdemeanor involving moral turpitude;
- (5) — Conducting the business of soliciting or peddling in an unlawful manner or in a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

Sec. 18-41. — Notice of hearing for revocation.

Notice of hearing for revocation of an identification card issued under this article shall be given in writing setting forth specifically the grounds of complaint and the time and place of hearing. The notice shall be mailed postage prepaid to his last known address at least five days prior to the date for hearing.

Sec. 18-42. — Right of appeal.

(a) — *Entitlement.* Any solicitor or peddler aggrieved by the action of the chief of police in the denial of an identification card as provided in ~~section 18-34~~ or in the decision with reference to the revocation of the identification card as provided in ~~section 18-40~~, shall have the right of appeal to the city council.

(b) — *Procedure.* The appeal shall be taken by filing with the city council within 14 days after the notice of the action complained of has been mailed to the person's last known address, a written statement setting forth the grounds for appeal.

(c) — *Hearing; decision.* The city council shall set a time and place for a hearing on such appeal and notice of the hearing shall be given to the appellant in the same manner as provided in ~~section 18-41~~ for notice of hearing on revocation. The decision and order of the city council on the appeal shall be final and conclusive.

Sec. 18-43. — Hours of operation.

(a) — No peddler or solicitor shall apply his trade except from 9:00 a.m. to 9:00 p.m.

(b) — It shall be unlawful for any person to solicit any order for the sale of any goods, wares, merchandise, periodical, or publication or to sell or offer for sale any goods, wares, or merchandise, with the exception of milk, medicine, and newspapers, from house to house, between the hours of 9:00 p.m. and 9:00 a.m.

Sec. 18-44. — Reporting change of address.

— Any person who is required to register under the terms of this article is likewise required to inform the chief of police of any change of address within 48 hours after the change is made.

Sec. 18-45. — Files to be maintained on registered persons.

(a) — The files of all persons required to be registered under this article shall be kept in a manner as the city manager may prescribe.

~~(b) No person, except the duly authorized identification officer in charge of registration files, the chief of police, the city manager, and those persons formally authorized by the city council, shall have access to or be permitted to examine the registration files.~~

STAFF RECOMMENDATION: Staff recommends **APPROVAL** of Ordinance 2, 2018 as presented on first reading.

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ORDINANCE 2, 2018

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA, AMENDING CHAPTER 18. BUSINESSES. AT ARTICLE II. PEDDLERS AND SOLICITORS. IN ORDER TO REVISE THE REGULATIONS PERTAINING TO SOLICITORS AND HOME SOLICITATION SALES IN ORDER TO ADOPT THE REGULATIONS CONTAINED IN CHAPTER 501, FLORIDA STATUTES; PROVIDING DEFINITIONS; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Chapter 501, *Florida Statutes*, provides the regulation of home solicitations and solicitors including a county-wide registration process; and

WHEREAS, the City Council of the City of Palm Beach Gardens desires to update the City Code of Ordinances in order to adopt the procedure for the county-wide registration of solicitors and streamline the process; and

WHEREAS, the City Council deems approval of this Ordinance to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Palm Beach Gardens and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA, that:

SECTION 1. Chapter 18. Businesses. of the Code of Ordinances of the City of Palm Beach Gardens at Article II. Peddlers and Solicitors. is hereby repealed in its entirety and readopted, as revised with a new title, in order to revise, clarify, update the procedures and regulations of solicitors and home solicitation sales within the City; providing that Article II. of Chapter 18. Businesses. shall be entitled Home Solicitation Sales. and shall hereafter read as set forth in Exhibit "A", attached hereto and incorporated herein.

SECTION 2. All ordinances or parts of ordinances in conflict be and the same are hereby repealed.

SECTION 3. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

SECTION 4. Specific authority is hereby given to codify this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon adoption.

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PASSED this ____ day of _____, 2018, upon first reading.

PASSED AND ADOPTED this ____ day of _____, 2018, upon second and final reading.

CITY OF PALM BEACH GARDENS	FOR	AGAINST	ABSENT
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BY: _____	_____	_____	_____
Maria G. Marino, Mayor			
_____	_____	_____	_____
Mark T. Marciano, Vice Mayor			
_____	_____	_____	_____
Carl W. Woods, Councilmember			
_____	_____	_____	_____
Matthew Jay Lane, Councilmember			
_____	_____	_____	_____
Rachelle A. Litt, Councilmember			

ATTEST:

BY: _____
Patricia Snider, CMC, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: _____
R. Max Lohman, City Attorney



EXHIBIT "A"

CHAPTER 18

ARTICLE II. – ~~PEDDLERS AND SOLICITORS~~ HOME SOLICITATION SALES.

Sec. 18-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Home solicitation sale means a sale, lease, or rental of consumer goods or services with a purchase price in excess of \$25 which includes all interest, service charges, finance charges, postage, freight, insurance, and service or handling charges, whether under single or multiple contracts, made pursuant to an installment contract, a loan agreement, other evidence of indebtedness, or a cash transaction or other consumer credit transaction, in which:

- (1) The seller or a person acting for him or her engages in a personal solicitation of the sale, lease, or rental at a place other than at the seller's fixed location business establishment where goods or services are offered or exhibited for sale, lease, or rental, and
- (2) The buyer's agreement or offer to purchase is given to the seller and the sale, lease, or rental is consummated at a place other than at the seller's fixed location business establishment, including a transaction unsolicited by the consumer and consummated by telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services. It does not include a sale, lease, or rental made at any fair or similar commercial exhibit or a sale, lease, or rental that results from a request for specific goods or services by the purchaser or lessee or a sale made by a motor vehicle dealer licensed under Section 320.27, Florida Statutes, which occurs at a location or facility open to the general public or to a designated group.

Peddler means any person, whether a resident of the city or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car, or other vehicle or conveyance. Anyone who solicits orders and, as a separate transaction, makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a "peddler." The word "peddler" shall include the words hawker and huckster.

~~Solicitor means any individual, whether resident of the city or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares, and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not the individuals have, carry, or expose for sale a sample of the subject of the sale or not. This definition shall include any person who for himself or for another person hires, leases, uses, or occupies any building, structure, tent, railroad box car, boat, hotel room, lodginghouse, apartment, shop, or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery. The term "solicitor" shall include the term "canvasser."~~

Sec. 18-32. Registration; fingerprinting and photographing Permit required.

~~Each person who is employed, or who performs services in any capacity within the city as a peddler or solicitor or intends to conduct home solicitation sales as defined in this Article within the city shall register obtain pursuant to Chapter 501, *Florida Statutes*, with a valid home solicitation sales permit from the Palm Beach County Clerk of Circuit Court chief of police of the city his name, description, date of birth, last place of employment, if any, and shall also be fingerprinted and photographed by or under the direction of the chief of police prior to engaging in the described occupations.~~

Sec. 18-33. Registration fee Display of permit.

~~All persons required to register under this article shall pay the sum which is on file in the city clerk's office to the police department for the defraying of cost of fingerprinting and photographing. Every person engaged in home solicitation sales shall carry pursuant to Chapter 501, *Florida Statutes*, a valid permit at all times while engaged in home solicitation sales within the city and shall display the same to all prospective buyers before initiating the solicitation of a sale, lease or rental.~~

Sec. 18-34. Identification cards Exclusions.

~~Identification cards shall be issued by the chief of police to all persons after they have been duly registered under this article, which shall be carried by those persons at all times during which they shall be engaged in the occupation. Identification cards shall be issued for a period of two years only. Upon expiration of the two-year period, each person shall be required to reregister in the manner as set forth in section 18-32 and receive a new identification card with an expiration date two years hence. Identification cards shall not be issued until the fingerprints of each registrant has been forwarded by the chief of police for investigation and a report obtained therefrom. Exclusions from this article shall be pursuant to Chapter 501, *Florida Statutes*.~~

Sec. 18-35. Employment of unregistered persons prohibited Penalty.

~~It shall be unlawful for any person to employ any person that is required to secure an identification card unless the person has prior to such employment obtained an identification card as required in this article. In accordance with Chapter 501, *Florida Statutes*, the Attorney General or state attorney may institute proceedings to enjoin any person found to be violating the provisions of Chapter 501, *Florida Statutes*.~~

Sec. 18-36. Exemptions Duties of police officers.

~~The only persons excepted from the provisions of this article shall be licensed physicians, dentists, ordained clergymen, and persons who deliver newspapers to private residences within the city provided the newspapers are of general circulation. It shall be the duty of any police officer of the city to require any person seen conducting home solicitation sales to produce the required permit and certificate.~~

Sec. 18-37. Penalty Hours of operation.

~~In accordance with section 2-186 et seq. and F.S. § 162.09, the code enforcement board of the city is hereby granted jurisdiction for enforcement of this article and shall have the power to impose a fine in the maximum sum of \$250.00 per day with each day the violation occurs constituting a separate offense on any person or corporation who violates the provisions of this article.~~

- ~~(1) No person shall engage in home solicitation sales except from 9:00 a.m. to 9:00 p.m.~~
- ~~(2) It shall be unlawful for any person to conduct home solicitation sales any order for the sale of any goods, wares, merchandise, periodical, or publication or to sell or offer for sale any goods, wares, or merchandise, with the exception of milk, medicine, and newspapers, from house to house, between the hours of 9:00 p.m. and 9:00 a.m.~~

Sec. 18-38. Interstate commerce.

~~Notwithstanding any other provisions of this article to the contrary, any solicitor within the city dealing in interstate commerce and who is not required to obtain a city occupational license as provided in section 66-36 et seq. shall only be required to obtain an identification card to act as a solicitor in accordance with the terms and provisions of this article.~~

~~In accordance with section 2-186 et seq. and F.S. § 162.09, the code enforcement board of the city is hereby granted jurisdiction for enforcement of this article and shall have the power to impose a fine in the maximum sum of \$250.00 per day with each day the violation occurs constituting a separate offense on any person or corporation who violates the provisions of this article.~~

Sec. 18-39. Duties of police officers.

~~(a) It shall be the duty of any police officer of the city to:~~

- ~~(1) Require any person seen soliciting or peddling, and who is not known by that officer and who is required to be licensed as provided in section 66-36 et seq. to produce his license.~~
- ~~(2) Enforce the provisions of this article against any person found to be violating the article.~~

~~(b) The chief of police shall keep a record of all convictions for violations of this article and shall maintain a record for each identification card issued and record the reports of violations in such records.~~

Sec. 18-40. Revocation of identification card; grounds.

Identification cards issued under the provisions of this article may be revoked by a board consisting of the mayor, city manager, and the chief of police, after notice and hearing, for any of the following causes:

- ~~(1) Fraud, misrepresentation, or false statement contained in the application;~~
- ~~(2) Fraud, misrepresentation, or false statement made in the course of carrying on his business as solicitor or peddler;~~
- ~~(3) Any violation of this article;~~
- ~~(4) Conviction of any crime or misdemeanor involving moral turpitude;~~
- ~~(5) Conducting the business of soliciting or peddling in an unlawful manner or in a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.~~

Sec. 18-41. Notice of hearing for revocation.

Notice of hearing for revocation of an identification card issued under this article shall be given in writing setting forth specifically the grounds of complaint and the time and place of hearing. The notice shall be mailed postage prepaid to his last known address at least five days prior to the date for hearing.

Sec. 18-42. Right of appeal.

~~(a) *Entitlement.* Any solicitor or peddler aggrieved by the action of the chief of police in the denial of an identification card as provided in section 18-34 or in the decision with reference to the revocation of the identification card as provided in section 18-40, shall have the right of appeal to the city council.~~

~~(b) *Procedure.* The appeal shall be taken by filing with the city council within 14~~

~~days after the notice of the action complained of has been mailed to the person's last known address, a written statement setting forth the grounds for appeal.~~

~~(c) *Hearing; decision.* The city council shall set a time and place for a hearing on such appeal and notice of the hearing shall be given to the appellant in the same manner as provided in section 18-41 for notice of hearing on revocation. The decision and order of the city council on the appeal shall be final and conclusive.~~

~~Sec. 18-43. Hours of operation.~~

~~(a) No peddler or solicitor shall apply his trade except from 9:00 a.m. to 9:00 p.m.~~

~~(b) It shall be unlawful for any person to solicit any order for the sale of any goods, wares, merchandise, periodical, or publication or to sell or offer for sale any goods, wares, or merchandise, with the exception of milk, medicine, and newspapers, from house to house, between the hours of 9:00 p.m. and 9:00 a.m.~~

~~Sec. 18-44. Reporting change of address.~~

~~—Any person who is required to register under the terms of this article is likewise required to inform the chief of police of any change of address within 48 hours after the change is made.~~

~~Sec. 18-45. Files to be maintained on registered persons.~~

~~(a) The files of all persons required to be registered under this article shall be kept in a manner as the city manager may prescribe.~~

~~(b) No person, except the duly authorized identification officer in charge of registration files, the chief of police, the city manager, and those persons formally authorized by the city council, shall have access to or be permitted to examine the registration files.~~

~~Secs. 18-46 38—18-70. Reserved.~~