in the broadest legal definition adopted by the U.S. Courts. However, there is substantial evidence to warrant the conclusion that Scientology (1) does not encompass belief in a deity, which is one of the traditional tests for religion; (2) does have a structure of authoritative precepts fundamentally opposed to the laws and ethics of our society which precepts condone and encourage the commission of crimes and fraud; and (3) employs a "religious front" for the sole purpose of obtaining money and power. Despite these latter conclusions, the City should not interfere with those beliefs and practices which arguably fall within the ambit of "religious activity" in the broadest legal interpretation. The specific regulatory measures proposed would safeguard legitimate First Amendment free exercise of religion, while protecting the community, and individuals from many of the fraudulent, deceptive and criminal practices of Scientology which appear to be widely employed within and without the City.

III. APPLICABLE PRINCIPLES OF LAW

A. A FLORIDA MUNICIPALITY HAS THE POWER TO REGULATE TAX-EXEMPT ORGANIZATIONS SOLICITING MONEY OR PROPERTY

In most states and in many cities and towns in the United States, ordinances have been enacted which, in varying ways, regulate organizations which are or hold themselves out to be benevolent, civic, educational, fraternal, voluntary health, philanthropic, humane, patriotic, or religious organizations. In most instances, regulation is accomplished by requiring registration, application for and issuance of permits before the organization is allowed to solicit money

or property. The purpose of such an ordinance is generally considered to be that of protecting the public from fraud. See Village of Schaumburg v. Citizens, Etc., 100 S. Ct. 826 (1980) and cases cited therein. The compelling interest of the state or municipality to protect fraudulent practices by organizations operating under the pretext of a charity or a religion is universally recognized in the law. Village of Schaumburg, supra; Cantwell v. Connecticut, 310 U.S. 296 at 306 (1940). League of Mercy Association, Inc., v. City of Jacksonville, 376So2d 892 (1972); Gospel Army v. City of Los Angeles, 163 P2d 704 (1945); see generally, Delgado, Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment, 51 Southern California L. Rev. 1 (1977). Societal interests in protecting against such fraud are compelling because there are few fraudulent schemes more easily contrived and executed than those conducted under the aegis of charity or religion.

Florida has enacted a statute entitled "Solicitation of Charitable Funds", Section 496.01 et seq, of the Florida Code, which requires registration, payment of a fee, maintenance and availability of financial records, prohibited acts, enforcement procedures and penalties. The statute has not yet been constitutionally tested, but the Department of State has been regulating "Charitable Organizations", as defined in the statute, pursuant to the provisions thereof. Under the Florida Regulatory Reform Act, the statute is currently being reviewed, and as originally drafted, the statute is being repealed effective July 1, 1982.

The Florida Statute provides that it does not

"preempt any more stringent county or municipal provision to restrict local units of government

from adopting more stringent provisions, and, in such case, such provisions shall be complied with if the registrant desires to solicit within the geographic district of the local unit of governance" (Emphasis supplied). F.S.A. 496.132

In fact, the City of Jacksonville has adopted such an ordinance, the First District Court of Appeals in Florida has upheld the ordinance, and the Florida Supreme Court has denied further appeal. League of Mercy, supra. In the League of Mercy case, the City of Jacksonville successfully shut down a commercial enterprise operating as a racket religion with enforcement of its ordinance.

In England, an ordinance regulating the taxation of purportedly "religious" property through the use of a permit was specifically upheld against the Church of Scientology. Although the ordinance involved taxation of property as opposed to the regulation of charitable funds, there is analogous application of the principles in that case because a permit was required. In the case of R.v. Registrar General, 3 All ER 886 (1970), a local public official denied a permit to the Church of Scientology which would have exempted from taxation the "Saint Hill Manor", a Scientology-owned property. The English Court upheld the ordinance in that case and the power of the official to refuse the permit in finding that the Scientology property was not "a place of meeting for religious worship" as required by the ordinance. This case is discussed in Section IV C (3) of this Report.

We have carefully reviewed the Florida statute and the Jacksonville ordinance in light of most, if not all, of the pertinent decisions of the United States Supreme Court as well as many of the decisions of other appellate courts

throughout the United States treating the First Amendment problems of free exercise of religion.

Based upon our analysis of these decisions, and of many different ordinances, including the Florida statute and Jacksonville ordinance, it is our opinion and recommendation that the City should enact an ordinance drafted with more "narrow specificity" than those enacted in most jurisdictions, including Jacksonville. We have proposed such an ordinance in Section V (1) of this Report.

The proposed ordinance is recommended to the City based upon the conclusion that it is unwise to enact an ordinance with broad discretionary powers delegated to a public official to issue or not issue permits to "charitable organizations" engaged in solicitation. Such ordinances may be described as "Permit Approval" ordinances as illustrated by the Jacksonville ordinance. Although the Florida Court of Appeals in the League of Mercy case, supra, upheld such an ordinance, and the Florida Supreme Court denied certiorari, the United States Supreme Court has traditionally struck down such ordinances as overly broad. Schneider v. State, 308 U.S. 147 (1979); Cantwell v. Connecticut, 310 U.S. 296 (1970); Jamison v. Texas, 318 U.S. 413; Murdock v. Pennsylvania, 319 U.S. 105 (1943); Martin v. Struthers, 319 U.S. 141 (1943); Thomas v. Collins, 323 U.S. 516 (1945); Hynes v. Mayor of Oradell, 425 U.S. 610 (1976); Village of Schaumburg v. Citizens, Etc., 100 S. Ct., 826 (1980).

The result in the League of Mercy case suggests that enactment of an ordinance similar to the Jacksonville one would

be upheld by the Florida Suprome Court. However, there is a significant probability of an appeal to the United States Supreme Court and a questionable risk as to the result, particularly in light of the cases cited above. There are Justices in the Court, such as Justice Rehnquist, who advocate states' rights, specifically the right of a municipality to regulate the solicitation of charitable organizations with a "permit approval" ordinance. (See his opinion in the Schaumburg case, supra.) The recent appointment of Justice O'Connor, a states' rights advocate, would bolster this view on the Court.

The Schaumburg case and previous cases cited above, and Heffron v. International Society for Krishna Consciousness 49 Law Week 4762 (1981) dealing with this issue, have consistently viewed the First Amendment principles of Free Speech and Free Exercise of Religion to be of such importance that ordinances such as that in the League case, must be drafted with very "narrow specificity". The Court in Schaumburg encouraged proscriptions against fraudulent misrepresentation and detailed disclosure requirements in such ordinances as opposed to the broadly discretionary "permit approval". We have adopted this approach in the proposed ordinance. Compare U.S. v. Church of Scientology, 520 F 2d 818 (9th Cir. 1975); Bourgeois v. Landrum 396 So. 2d 1275 (1981) and Surinach v. Pesquera de Busquets, 604 F 2d 73 (1979).

The Florida "Solicitation of Funds" statute, Section 496.01, has both permit requirements and it has broad disclosure requirements requiring "charitable organizations" to provide financial records and relevant information to the Department of State. The statute contains various prohibited acts and provides for administrative proceedings for:

"purposes of enforcing the provision...(of the statute) and in making investigations relating to any violation thereof, for purposes of investigation of character, competence or integrity of any organization, and for purposes of investigating practices and business methods thereof."
Section 496.021 (6)

Although the statute has never been constitutionally tested, one of its sections (Section 496.11[8]) appears to be in violation of the Schaumburg case. Portions of the statute could be enacted by the City of Clearwater which would, based on existing precedent, pass constitutional muster, and also provide significant local regulatory authority. This power would include identification of those soliciting funds, maintenance and availability of the organization's records, and public hearings to determine whether the organization is violating the criminal law or engaged in fraudulent practices, with attendant penalties. The Supreme Court in Cantwell, supra, and Schaumburg, supra, suggested that such measures are constitutionally valid.

We have incorporated narrowly drawn measures of this type in the proposed ordinance set forth in Section V (1).

B. MUNICIPAL AUTHORITY TO ENACT A CONSUMER PROTECTION ORDINANCE

The Federal Government, most states and many municipalities have enacted what have been commonly referred to as "consumer protection" laws. Although there is a limited body of case decisions interpreting these laws because of their relatively recent origin, the underlying rationale for such laws is to prevent fraud and to provide for governmental action against such fraud.

The Federal Trade Commission Act, 15 U.S.C §45, serves as the model for many of the state and municipal laws. Both the federal act and state statutes are designed to prohibit false and misleading representations in the sale of goods or services, preventing unfair competition and prohibiting the use of a "bait and switch" scheme to lure unwitting consumers into higher-priced transactions. See generally 89 A.L.R. 3rd 399 and 449 (1979).

In 1973, Florida enacted a "deceptive and Uniform Trade Practices" act which is modeled upon the Federal Trade Commission Act. F.S.A. 501.201 et seq. Florida refers to its act as the "Little FTC Act". In the case of Department of Legal Affairs v. Rogers, 329 So2d 257 (1976), the Florida Appellate Court held that the "Little FTC Act" properly proscribed unfair methods of competition and unfair or deceptive acts or practices; that "great weight" should be given to interpretations of the Federal Trade Commission Act; and that the "Little FTC Act" did not constitute an unlawful delegation of legislative authority to the administrative agency enforcing the act according to federal trade law standards.

The "Little FTC Act" gives to the State Attorney and the Department of Legal Affairs the authority to enforce the act through various remedies set forth in the act. These remedies include the power to obtain a declaratory judgement, injunctive relief, to recover actual damages on behalf of victims, and the power to hold administrative hearings to investigate violations of the Act.

The "Little FTC Act" specifically provides that the Act "is supplemental to and makes no attempt to preempt, local

consumer protection ordinances not inconsistent with the Act. F.S.A. 501.213 (2). (Emphasis supplied) The Florida Supreme Court in the case of Pinellas County, Etc. v. Castle, 392 So 2d 1292 (1981) specifically held that Pinellas County was constitutionally authorized to enact its own consumer protection law and that the changes made by the Pinellas consumer protection law did not violate due process. Thus, it appears that under the provisions of the "Little FTC Act" and by case decision of Florida's highest court, the City of Clearwater could properly enact a consumer protection ordinance designed to prohibit fraud and unfair competition.

The fact that a local consumer protection ordinance might be applicable to the acts or conduct of a non-profit, charitable or religious organization, as well as to any other individual or entity, does not render the ordinance unconstitutional. The law certainly does not give special protection to a religious organization committing crimes, torts or deceptive practices, which consumer protection laws are designed to prevent. See U.S. v. Ballard, 322 U.S. 78 (1944) dismissed infra.

A consumer protection law such as that proposed in Section V of this Report, has been made applicable to a religion. In the case of F.E.L. Publications v. National Conference of Catholic Bishops, 466 F. Supp. 1034 (1978), a Federal District Court in Illinois held that the Illinois deceptive trade practices act applied to alleged unfair competition and deceptive acts by a conference of Catholic bishops. The court in that case rejected the bishops' claim of First Amendment protection for the alleged wrongful acts holding that the case did not involve an intra-church dispute, but whether the copywright,

unfair competition and consumer protection law were violated.

In numerous lower court cases, some of which are still in litigation or on appeal, the Church of Scientology has moved to dismiss claims brought by individuals alleging violation of consumer protection laws, as well as fraud, the unlicensed practice of medicine, intentional infliction of emotional distress, violations of minimum wage laws, violations of racketeering laws, and other miscellaneous claimed wrongs. In all of those civil cases, in a variety of court proceedings involving criminal indictments and convictions, the Church of Scientology has attempted to dismiss the case or proceeding on the grounds of freedom of religion. The courts have almost unanimously rejected this defense. The cases set forth in Section IV (C) of this Report outline most of these cases.

Appellate or reported case decisions involving the relationship between a purported religious organization, the right of the state to protect its citizens from crime or fraud and the free exercise clause of the First Amendment have been rendered by many American courts.

The protection provided by the First Amendment to the U.S. Constitution to organizations claiming religious status is not absolute. Where representations are involved, a party is immune to liability only if his representations are (1) religious in character and (2) made in good faith. Where actions are involved, a party always remains subject to judicial review to achieve sufficiently important state objectives, and cannot cloak himself with the First Amendment

to commit otherwise tortious acts.

Fraudulent Misrepresentations

The U.S. Constitution gives every person the absolute right to believe what he or she wants, but does not create a license to do or say anything in the name of religion. In Cantwell v. Connecticut, 310 U.S. 296, 303-4, the Supreme Court stated:

> "The Amendment embraces two concepts, --- freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."

In Cantwell, the Court struck down a state criminal statute barring the solicitation of money by a religious organization without the prior approval of the Secretary of a state agency. The Court, however, made it very clear that its decision did not apply to fraudulent practices:

> Nothing we have said is intended even remotely to imply that under the cloak of religion persons may, with impunity, commit frauds upon the public...the state is...free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort, or convenience.

In U.S. v. Ballard, 322 U.S. 78 (1944) the Supreme Court specifically dealt with the issue of a First Amendment "religion" defense in a fraud case. In Ballard the "I Am" movement was charged with mail fraud for soliciting funds through false representations. The defense was that the representations were religious in nature and therefore immune from inquiry. The Federal District Court had ruled with the acquiescence of all counsel that the representations were religious in nature and that the standard to be applied in instructions to the jury was not the truth or falsity of the assertions

made by the defendants but:

> "Did these defendants honestly and in good faith believe those things?" (322 U.S. at 81)

On review the Supreme Court approved and adopted this "good faith" standard. The Court stated:

> "...We conclude that the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents." (322 U.S.at 88)

The Court approved the following jury instructions:

> "You are not to be concerned with the religious belief of the defendants, or any of them. The jury will be called upon to pass on the question of whether or not the defendants honestly and in good faith believed the representations which are set forth in the indictment, and honestly and in good faith believed that the benefits which they represented would flow from their belief to those who embraced and followed their teachings, or whether these representations were mere pretense without honest belief on the part of the defendants or any of them, and, were the representations made for the purposes of procuring money, and were the mails used for this purpose." (322 U.S. at 82)

This "good faith" standard has stood for thirty-five years and been applied in a variety of contexts, notably selective service litigation. See U.S. v. Seeger, 380 U.S. 163 (1964). The rule means simply that where a religious defense is interposed, the jury may not look into the truth or falsity of a religious belief but only the question of whether the belief is sincerely held. Conversely, a defendant raising a "religion" defense may be required to show that he holds his beliefs sincerely and not as a mere pretext for some other purpose.

In Ballard, as noted, there was no factual controversy

whether the representations were religious in nature. It is clear, however, that before a defendant can interpose a "religion" defense he must establish that his representations were religious and not secular. U.S. v. Carruthers, 152 F2d 512 (7th Cir., 1946). Carruthers was also a mail fraud case. The decision stresses the importance of distinguishing between religious and secular representations. The defendant's representations included both secular and religious promises. He claimed to be a Doctor of Medicine and Divinity and to have studied in Tibet and England. He administered to both religious and physical needs of the Foundation's "students" and made numerous representations in both categories. The Court of Appeals, in affirming the conviction, held that a jury could properly determine into which category the representations belonged, secular or religious. If the represenations were of a religious nature, the "good faith" test of Ballard would apply; if they were secular the jury would judge them by ordinary common law standards of fraud. The jury instructions in Carruthers stated, in part:

> You are further instructed that representations of the defendants, or any of them, concerning or relating to the subject of breathing, silence, and positions of persons during sleep, if you believe that they are matters within the field of religion, as taught the defendant Carruthers, and the truth or falsity of such representations, if any, may not be questioned in any way by you in arriving at your verdict in this case. (152 F2d at 517)

Thus, Ballard and Carruthers, taken together, clearly state that when a "religion" defense is raised, a jury may first determine whether the particular representations are religious, and if they are, may further question whether they are sincerely held. Both these factual hurdles must be cleared before First Amendment immunity attaches. Only the truth or falsity of sincerely held religious beliefs are immune from inquiry under the First Amendment.

The activities and representations of a purported religion, namely the Church of Scientology, have been tested under the Ballard and Carruthers standards in two related cases decided in the District of Columbia, Founding Church of Scientology v. U.S., 409 F. 2d 1146 (D.C., 1969), and United States v. Article or Device, 333 F. Supp. 357 (D. Ct. D.C., 1971).

Founding Church involved an effort by the Federal Government to condemn the "E-Meter" under the Food and Drug laws, (the "E-Meter" is a crude lie detector used by the Scientologists during auditing). The issue was one of "mislabeling", and the government was required to show false secular representations regarding the uses and benefits of the device. In the course of the trial a great many representations were proven and submitted to the jury. The Court of Appeals found that some of these were clearly secular, but that some were of a religious nature. The Court concluded that in view of the manner in which the evidence was submitted to the jury, there was a possiblity that they had rendered a verdict based on an evaluation of the truth or falsity of some of the religious representations. This was held to violate the Ballard doctrine. It should be noted that in Founding Church, the government made no effort to attack the "good faith" of the religious representations involved. Thus, the Court expressly refrained from making certain holdings:

> (1) We do not hold that the Founding Church is for all legal purposes a religion. Any prima facie case made out for religious status is subject to contradiction by a showing that the beliefs asserted to religious are not held in good faith by those asserting them, and that forms of religious organizations were erected for the sole purpose of cloaking a secular enterprise with the legal protections of a religion.

> (2) We do not hold that, even if Scientology is a religion, all literature published by it is a religious doctrine immune from the act. 409 F. 2d 1162.

The Court thus made it clear that on retrial the government could secure a conviction by showing either secular misrepresentations, or religious representations not held to be in good faith.

The case was then retried, and an opinion issued by the District Court entitled United States v. Article or Device (supra). The Court's opinion directly and forcefully confronts the issue of claimed First Amendment protection by Scientology. The judge noted, initially, that Scientology representations are to some extent an admixture of secular and religious claims.

> A few of these writings are primarily religious in nature. Others contain medical or scientific claims in a partially religious context. Most of the material, however, explains aspects of Scientology and Dianetics in purely matter-of-fact medical and scientific terms without any apparent religious reference. 333 F. Supp. at 361

On retrial the government again made no effort to attack the "good faith" of the defendant's religious claims. Thus, to comply with the Founding Church decision the trial court considered only those claims which were clearly secular. The trial court in Article or Device had no difficulty separating secular from religious claims. The Court stated:

> The bulk of the material is replete with false medical and scientific claims devoid of any religious overlay or reference. 333 F. Supp. at 361 (Empasis supplied)

The Court also stated:

> ...it is a gross exaggeration to insist that the energetic, persistent solicitation of E-Meter audited cures for a fee has all occurred in a spiritual setting without use of a secular appeals and false scientific promises made in a wholly non-religious context. 333 F. Supp. at 360

Finally, the Court set forth in an appendix to the decision

a listing of Scientology publications which it concluded to be secular misrepresentations.

Tortious and Illegal Acts

As noted above, the First Amendment confers absolute protection for religious beliefs, but does not necessarily confer immunity for actions, even if they are religiously motivated. See Cantwell v. Connecticut, supra. Over the years many restraints upon action have been upheld even though they run afoul of particular citizen's religious beliefs. These included laws restricting child labor, Prince v. Massachusetts, 321 U.S. 158 (1944)., compulsory blood tranfusions, Jehovah's Witnesses v. King County Hospital, 390 U.S. 598 (1968). In short, action may be regulated whenever the state has a sufficiently important objective.

The guarantee of a judicial remedy for intentionally inflicted torts is clearly an important state objective. See Turner v. Unification Church, 473 F. Supp. 367 (D.C.R.I., 1978). In Turner, the Court stated:

> In ruling on this motion, the Court initially finds that the free exercise clause of the First Amendment does not immunize the defendants from causes of action that allege involuntary servitude or intentional tortious activity. 473 F. Supp at 371

There appear to be no case decisions which hold that activity which is otherwise tortious is excusable simply because it was committed by a religious organization or for religious reasons. Nor would such a rule be compatible with established constitutional principles. In effect, a grant of such immunity for otherwise illegal activity would convert the First Amend-

ment, which is intended to be a shield against government interference, into an offensive weapon. Furthermore, the granting of such immunity would come dangerously close to the establishment of religion, also forbidden by the constitution, since it would give a significant legal advantage to those persons and entities claiming "religious" motive which it withheld from a non-religiously motivated person.

Therefore, a consumer protection ordinance, such as that proposed and discussed in Section V (2) of the Report, implemented and enforced to proscribe fraudulent practices should withstand constitutional attack.

C. MUNICIPAL AUTHORITY TO TAX ORGANIZATIONS CLAIMING TAX EXEMPT STATUS

Tax exemptions have existed since biblical times, and today all of the fifty states allow tax exemptions for places of worship. Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970). State and Federal Statutes and many state constitutions provide tax exemptions for various charitable, non-profit, religious, educational and scientific organizations. An applicant who seeks exemption from a state or federal tax bears the burden of demonstrating qualification. Dickinson v. United States, 346 U.S. 389, 74S. Ct. 152 (1953). This part of the Report requires an examination of the burden on those organizations which seek a religious exemption from state and federal taxation, and the criteria by which the taxing authority determines exemption.

Religious Exemption

The First Amendment forbids the federal and state governments from enacting legislation which prohibits the free exercise of religion or which tends to favor or establish one religion. U.S. Constitution Amendment 1. However, the Supreme Court has held that granting a tax exemption to a bona fide religious organization does not violate the establishment clause of the First Amendment. Walz v. Tax Commission of the City of New York, supra. The Supreme Court has not decided whether taxing religious properties would constitute a violation of the free exercise clause of the First Amendment. Walz, supra.

Keeping First Amendment considerations in mind, an organization must qualify as a religion to claim exempt status. Otherwise, any organization masquerading as a religious entity, could qualify for a tax exemption. The taxing authority is empowered to determine whether an organization qualifies for tax exempt status. Whether the taxing authority is the state or federal government, the criteria for determining religious exemption is contained in case and statutory law. The statutory schemes which regulate religious exemptions provide for administrative remedies for an aggrieved applicant. Assuming an applicant is denied exemption and has exhausted his administrative remedies, resort may be had to the courts. Many exemption-denied organizations have sought judicial relief which has created a body of federal and state case law concerning the necessary criteria for qualification for a religious tax exemption. This case law will serve as a useful guide when applying Florida's Statutory scheme in determining and granting tax exemptions for religious organizations.

Florida Law

The Florida Legislature has enacted statutes which create exemptions for various organizations and entities. See generally, Florida Statutes Annotated, Ch. 196. Section 196.19 creates an exemption for religious organizations and Section 196.192 exempts all property used exclusively for exempt purposes from ad valorum (property) taxes. Likewise, the Florida Constitution grants an exemption for religious organizations. FLA. CONST. art. VII, §3. Most critically, the exemption for religious organizations is based upon the purpose for which the property is held and the manner in which the property is used. 1963 Op. Atty. Gen. 063-138, Nov. 13, 1963. Central Baptist Church of Miami, Fla., Inc., v. Dade County 216 SO. 2d 4 (1968). The mere fact that the title to real property is vested in a religious organization is not sufficient to show a right to tax exemption as the applicant must demonstrate that the property is used exclusively for religious purposes. Op. Atty. Gen. 066-17, March 11, 1966. An applicant seeking exemption for a religious organization must affirmatively demonstrate that the property is actually held and used exclusively for religious purposes. Moffett v. Ashby, 139 So. 2d 133 (1962); Dr. William Howard Hay Foundation v. Wilcox, 156 Fla. 704, 24 So. 2d 237 (1946); Op. Atty. Gen. 071-56, April 5, 1971.

A religious organization that seeks a tax exemption must file an application for exemption with the county tax assessor. The application must list the property for which the exemption is sought and certify its ownership and use. F.S.A.

196.011. Once the property appraiser receives an application for exemption, he shall determine the following:

(a) whether the applicant falls within the definition of any one or several of the exempt classifications

(b) whether the applicant requesting exemption uses the property predominantly or exclusively for exempt purposes

(c) the extent to which the property is used for exempt purposes

See F.S.A. §196.193 (3) (a) - (c).

The property appraiser shall apply the following criteria in determining whether an organization qualifies for a religious tax exemption:

(a) the nature and extent of the religious activity of the applicant, a comparison of such activities with all other activities of the organization and the utilization of the property for religious activities as compared with other uses.

(b) the extent to which the property has been made available to groups who perform exempt purposes, at a charge that is equal to or less than the cost of providing the facilities for their use, or the extent to which services are provided to persons at a charge that is equal to or less than the cost of providing such services. Such rental or service shall be considered as part of the exempt purposes of the applicant.

See F.S.A. 196.196.

The property appraiser may not grant a tax exemption for a religious organization if it is a profit organization. F.S.A. 196.195 (4). The Florida Legislature has set the following criteria for determining profit or non-profit status of an applicant seeking a religious tax exemption:

(a) the reasonableness of any advances on payment directly or indirectly by way of salary, fee, loan, gift, bonus, gratuity, drawing account, commission, or otherwise (except for reimbursements of advances for reasonable out-of-pocket expenses incurred on behalf of the applicant) to any person, company, or other entity, directly

or indirectly controlled by the applicant or any officer, director, trustee, member, or stockholder of the applicant;

(b) the reasonableness of any guaranty of a loan to, or an obligation of, any officer, director, trustee, member or stockholder of the applicant or any entity directly or indirectly controlled by each person, or which pays any compensation to its officers, directors, trustees, members, or stockholders for services rendered to or on behalf of the applicant;

(c) The reasonableness of any contractual arrangement by the applicant regarding rendition of services, the provision of goods or supplies, the management of the applicant, the construction or renovation of the property of the applicant, the procurement of the real, personal, or intangible property of the applicant. On other similar financial interest in the affairs of the applicant;

(d) the reasonableness of payments made for salaries for operation of the applicant or for services, supplies and materials used by the applicant, reserves for repair, replacement and depreciation of the property of the applicant, payment of mortgages, liens, encumbrances upon the property of the applicant, or other purposes;

(e) the reasonableness of charges made by the applicant for any services rendered by it in relation to the value of those services.

See F.S.A. 196.195 (2) (a) - (e).

In summary, the property appraiser's function is twofold: first, the appraiser must determine th nature and extent of the applicant's religious activities and the purpose for which the property will be used. F.S.A. 196.196; second, the appraiser must determine that the religious organization is a non-profit entity. F.S.A. 196.195.

Assuming the property appraiser determines that an applicant fails to qualify for a religious exemption, the appraiser must notify the applicant, who is entitled to an appeal to the property appraisal adjustment board. F.S.A. 196.193, 196.194. The board must review the decision of the property appraiser and apply the statutory criteria (supra) in reviewing the ap-

praiser's decision. F.S.A. 196.193.

The Florida Courts have considered laws in which the appraiser must determine the nature and extent of the applicant's religious activities and the purpose for which the property will be used. F.S.A. 196.196; secondly, the appraiser must determine that the religious organization is a non-profit entity. F.S.A. 196.195.

Assuming the property appraiser determines that an applicant fails to qualify for a religious exemption, the appraiser must notify the applicant, who is entitled to an appeal to the property appraisal adjustment board. F.S.A. 196.193, 196.194. The board must review the decision of the property appraiser and apply the statutory criteria (supra) in reviewing the appraiser's decision. F.S.A. 196.193.

The Florida courts have considered cases in which a religious entity was denied exemption from property tax. However, these cases address the character of the property use and not the nature and extent of the applicant's religious activities. The Florida courts have not addressed the issue of religious exemption based on the profit character of the applicant. Although the Florida courts may rely on the statutory criteria for determining the non-profit and religious character and use of property owned by entities seeking religious exemption, resort may be had to the case law of other jurisdictions. Some foreign courts, the Internal Revenue Service and the U.S. Tax Courts have examined the nature and extent of an organization's activities and the intended use of property in determining whether an applicant qualifies

for religious exemption. A limited examination of those cases is helpful.

Foreign Jurisdictions Consider The Religious Exemption

As suggested, Florida courts may consider opinions of other courts in interpreting the definition of religious purpose as it pertains to the exemption granted by F.S.A. 196.19. Recently, the application of the Unification Church (Moonies) for a religious exemption was denied by the tax commissioner for the City of New York. Holy Spirit Association, Etc. v. Tax Commissioner, Etc., App. Div. 438 N.Y.S. 2d 521 (1981). New York's Supreme Court rejected the Church's contention that its primary purpose was religious. The Court stated:

> By denying petitioner (Unification Church) tax exemption, this Court is not limiting petitioner's freedom to practice its beliefs and disseminate its doctrine; rather it is merely declaring that petitioner is not organized and conducted in the manner required by law to entitle it to a tax exemption. 438 N.Y.S. 2d at 530

The court noted that the Unification Church's primary purpose was not religious since its buildings were being used to espouse political and economic opinions. 438 N.Y.S. at 530. The Court reasoned that a denial of religious exemption for the Unification Church was "consistent with a legislative intent 'to stem the erosion of municipal tax bases by permitting local governments to terminate exemptions for non-profit organizations other than those conducted exclusively for religious,...purposes' ". 438 N.Y.S. at 531.

The court was not reluctant in expressing its duty to scrutinize those entities claiming religious exemptions:

> We are compelled to conduct a broad inquiry into petitioner's doctrine and activities in order to determine whether petitioner qualifies for the tax exemption provided by law...
> Courts can and will, however, examine such beliefs to determine whether they exhibit the minimum requirements of a religion. 438 N.Y.S. at 526

In the Unification Church case, Justice Birns applied the theistic definition of religion, a belief in a Supreme Being who is superior to all things in the universe, 526 N.Y.S. at 526, and found that the Unification Church met that minimal standard. However, the Court concluded that the Unification Church espoused political and economic doctrine which defeated any claim that the Church was organized for religious purposes. 526 N.Y.S. 528. Consequently, the Church was denied tax exemption.

Other courts have applied a more liberal definition of religion when interpreting "religious purposes" as the phrase pertains to religious exemption applicants. In Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 693, 315 P. 2d 394 (1957) the Court considered a claimed exemption from property tax predicated upon religious use. The Court refused to consider the theistic definition of religion, i.e., belief in a Supreme Being, but defined religion in the following manner:

> 1) a belief, not necessarily referring to supernatural powers; 2) a cult, involving a gregarious association openly expressing the belief; 3) a system of moral practice directly resulting from an adherence to the belief; and 4) an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment. 315 P. 2d at 406

The Court recognized that the applicant lacked belief in a Supreme Being but reasoned that the applicant's activities were similar in all respects to those of a theistic religious

group. The Court concluded that the property was used for religious purposes.

As demonstrated, Courts define the word religion differently for purposes of determining qualification for religious exemption. Apart from the concern for theistic or non-theistic belief, Courts will examine an applicant's activities to determine if the property is being used for "religious purposes". Many cases decided by the United States Tax Court and regulations issued by the Internal Revenue Service reflect this approach.

Internal Revenue Service and Application for Religious Tax Exemption

The Internal Revenue Service has considered numerous applications for religious tax exemption, and has developed a two-prong inquiry to assist in the determination of qualification for religious exemption: the organizational test and the operational test.

A. Organizational Test

An organization seeking a tax exemption must first demonstrate that it is organized exclusively for a religious purpose, I.R.C. 501 (c) (3). The Internal Revenue Service has not rendered a definition of "religious purpose" and the Supreme Court has been reluctant to announce a constitutional definition of religion, as the Court refuses to inquire into the truth or falsity of one's religious beliefs. United States v. Ballard, 322 U.S. 78, (1944). Therefore, courts may not evaluate the content of an organization's doctrine to determine if the organization qualifies for a religious ex-

emption. Founding Church of Scientology v. United States, 409 F. 2d 1146 (D.C. Cir.), cert. denied, 396 U.S. 963 (1969). The Service or a state taxing authority may consider the "sincerity" of an organization's purported religious beliefs, United States v. Ballard, 322 U.S. 78 (1944); Teterud v. Burns, 522 F. 2d 357 (8th Cir. 1975). If the taxing authority finds that the applicant does not sincerely believe the espoused beliefs, the tax exemption may be denied.

B. Operational Test

The Internal Revenue regulations require that an organization engaged primarily in activities which accomplish one or more exempt purposes, Reg. §1.501 (c) (3) - 1 (6) (1), forbid the net earnings to inure to the benefit of a private shareholder or individual, Reg. §1.501 (c) (3) - 1 (c) (2), and forbid the organization from serving a private interest, Reg. 1.501 (c) (3) - 1 (d) (i) (ii). If the above regulations are violated the organization will have failed to meet the operational test, i.e. it was not operating exclusively for religious purposes.

The "primary activity requirement" requires that a substantial part of an organization's activities be in furtherance of an exempt purpose. Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945). In The Church in Boston, 71 T.C. No 9 (1978), the Tax Court upheld the denial of an organization's application for religious exemption and held that the Church had engaged in substantial non-profit activities by granting substantial portions of funds to indi-

viduals. In Western Catholic Church, 73 T.C. No. 19 (1979), the Tax Court upheld the Internal Revenue Service's revocation of the Organization's religious exemption for failure to operate for an exempt purpose. After a review of the evidence the Court concluded that the Organization's primary activity was accumulating money and making investments.

The public interest requirement forbids an organization from serving a private rather than public interest. Reg. §1.501 (c) (3) - 1 (d) (i) (ii). An organization must demonstrate that it does not function for the benefit of the creator or his/her family, designated individuals or any person controlled by the creator, or his/her family. Unity School of Christianity, 4 B.T.A. 61, 69 (1926); Rev. Rul. 77-430 1977 - 2 C.B. 194.

Finally, organizations are prohibited from permitting inurement of their net earnings to any private individual. Courts will examine the following factors to determine if funds inure to the benefit of a private person:

1) the individual controls the disposition of the organization's funds;

2) the funds are transferred to the controlling individual or to persons controlled indirectly or directly by him; and

3) the fund transfer is not an ordinary and necessary expenditure of the organization, thus resulting in a benefit to the indivudual.

See Founding Church of Scientology, 412 F. 2d 1146, 1200.

The reasoning implemented by the Service when interpreting "religious purpose" and the opinions of the Tax Court, rendered upon review of the Service's rulings, may serve as a guide for the property tax assessor for Pinnellas County

when reviewing an application for religious exemption.

D. MUNICIPAL AUTHORITY TO LIMIT EXPANSION OF PURPORTED "CHURCH FACILITIES" IN THE "DOWNTOWN DEVELOPMENT AREA"

Florida law very clearly affords county and municipal authorities the right to reasonably regulate the location of churches and church facilities. See Town v. State ex rel Reno 377 So2d 648 (Fla. 1980) appeal dism. 101 S. Ct. 48. Florida differs from several other states in this regard. While courts in some of these states have held that First Amendment considerations take precedence over zoning laws, the Florida Supreme Court has consistently taken an opposite view, and its decisions have not been disturbed by the United States Supreme Court. See Town v. Reno ex rel State, supra; Miami Beach United Luther v. City of Miami Beach 82 So.2d880 (Fla. 1955); Pylant v. Orange County 328 So.2d199 (Fla. 1976); see also Town of Hialeah v. Hebraia Community Center 309 So.2d 212 (D. Ct. App. 1975); Trachsel v. City of Tamarac 311 So.2d 137 (D. Ct., App. 1975) Board of Commissioners of Dade County v. First Free Will Baptist Church 374 So.2d1055 (D. Ct. App. 1979).

These decisions approve a fairly broad range of zoning regulation of church buildings. In Board of Commissioners of Dade County v. First Free Will Baptist Church, supra, a regulation was upheld which permitted churches only in RV-3 zoning (4-unit apartment). In that case the Court upheld a zoning decision to deny a permit for a church in an agricul-

tural zone. In Town v. State ex rel Reno, supra, the Court upheld a zoning ordinance which excluded churches from single family residence zones. In the Pylant and Miami Beach cases, Courts approved zoning churches out of single family zones.

Other pertinent legal rules have developed. A new zoning ordinance, in order to withstand judicial scrutiny, need only be "fairly debatable". See the Trachsel case. Zoning ordinances may be justified by a change in a neighborhood. See Trachsel. Finally, zoning may be tailored with the intention of preserving existing property values, and there are many Florida cases which so hold.

With particular reference to churches, the Courts have been particularly unsympathetic to church groups which purchase properties in areas where zoning prohibited the location of churches prior to the purchase, and then attempted to overturn the zoning rule with a First Amendment argument. See Town v. State ex rel Reno. This is particularly so where there are other areas of the city in which churches are allowed. Furthermore, the Florida Supreme Court has not accepted the First Amendment argument as a basis for the "upset" of a comprehensive municipal plan. See Miami Beach.

The City of Clearwater has designated a Downtown Development District and is presently considering a revamping of its zoning laws which will, among other things, create a zoning corollary to the Downtown Development Area. This may be called the Downtown Development District. At the present time there is an unusually high and apparently growing

concentration of purported church facilities in the Downtown Development District. In deliberating on the adoption of a zoning ordinance for the Downtown Development District, the City should carefully consider the following factors:

1) What is the present concentration of church facilities in the Downtown Development District?

2) What has the effect of such concentration been on the business and commercial life of the area and on the property values of the area?

3) What is the projected expansion of church facilities in the area?

4) What effect would continued expansion of church facilities in the area reasonably be expected to have on the goals and objectives of the Downtown Development Area?

If the City were to adopt a zoning ordinance restricting expansion of church facilities in the Downtown Development Area (or conditioning it on a special permit or exception), it is likely that a church group or groups may attempt to test the validity of the ordinance with litigation. It is forseeable that a group seeking to expand in contravention to the ordinance would allege that the ordinance is invalid because it constitutes ethnic, religious, or invidious discrimination. See Town of Hialeah v. Hebraia Community Center, supra. Where such an attack is mounted against an ordinance the Court will ordinarily make a close examination of the record of the deliberations of the body which adopted the ordinance. Accordingly it is important that the City Commissioner, in considering this issue, consider only those factors which are regarded as valid objects of zoning regulation (see above) and avoid irrelevant or inflammatory matters.

E. MUNICIPAL AUTHORITY TO REGULATE THE PRACTICE OF PSYCHOLOGY AND PSYCHOTHERAPY

There are three possible approaches to the regulation of psychotherapy. These are 1) taxation, 2) registration, and 3) substantive regulation. The advantages and disadvantages are discussed, infra.

SCIENTOLOGY AS THE PRACTICE OF PSYCHOLOGY AND PSYCHOTHERAPY

The practices of Scientology undoubtedly constitute psychotherapy. Among the various psychotherapeutic claims of Scientology are increased I.Q., increased interpersonal communication skills, improved memory, freedom from neurosis and anxiety, marital and family harmony, and cures for drug addiction and psychosomatic illnesses. All of these benefits are claimed to be achieved by a process of "auditing" identical to psychotherapy. An auditor, on a paid hourly basis, interviews a "pre-clear" intensively about the details of his emotional life, while using a lie-detector (the "E-Meter") to sharpen his questioning. The auditor keeps notes of everything that is said. He propounds various words to the pre-clear such as "sex", "excreta", "masturbation", "eating human bodies", "dirty words", "saliva", "semen", "urine", "beastiality", "homosexuality","bowels", and "genitalia". If the auditor detects a response on the E-Meter at the suggestion of the word, he focuses in on it, as he believes that he has found an "engram". Basically, an "engram" is an imprint on the subconscious mind caused by a negative experience in this or a past life. For example, if one had a traumatic experience as a child with a dog, words such as "dog", "bark", or "bite", might trigger a response on the

E-Meter. Supposedly, engrams prevent us from "handling" certain situations effectively when thay are triggered. The entire process is represented as having a scientific basis and stated to be the product of "research". The "pre-clear" is told that the process, if carried through, is guaranteed to achieve results. No appeal to faith or religious belief is involved. See discussion infra, Section IV B.

Hubbard himself has written that the process is a form of psychotherapy. He explains how Scientology is related to Freudian thought. At one point he described Scientology as the "world's largest mental health organization". Although Scientology very deliberately began calling itself a religion in the late 1960's in an effort to achieve certain legal and tax benefits, the nature of the "auditing" process has not changed since the time when Hubbard was aggressively selling his process as a science. Regardless of what Hubbard says or said, however, it is obvious that auditing is essentially psychotherapy.

1. TAX APPROACHES. Under present Florida law, it seems clear that the City has the power to levy an occupational tax on psychotherapists. Florida Statutes (1979) ch. 205 specifically grants municipalities the authority to levy occupational license taxes.

At the present time, however, the authors of this report do not recommend such an approach for the following reasons:

a) Any such tax would have to be set at a reasonable, non-burdensome amount. Too large a tax would be subject to invalidation on the basis that it was a covert form of regulation and an improper use of taxing power. See Consolidated City of

Jacksonville v. Dusenberry, 362 So.2d 132 (D. Ct. of App., 1978).

b) The tax would be politically unpopular with other practitioners.

c) The Scientologists would simply refuse to pay the tax, claiming religious status under Fla. Stat. (1979) ch. 205, 191. A legal battle would ensue. Although the City would undoubtedly win in the end, the cost of litigation would certainly exceed expected revenues.

2. REGISTRATION APPROACHES. In 1979 the Florida legislature repealed then existing state statutes regulating the practice of psychology. Accordingly, the state preemption in this area has been removed. Whereas municipalities were formerly unable to enact ordinances in this area, (see Board of County Commissioners of Dade County v. Boswell, 167 So.2d 866 (Fla., 1964), they presumably are now free to regulate.[1]

The least intrusive form of regulation, and the one most immune to constitutional attack, is registration. By this, we mean, "informational" registration. The City could require anyone intending to practice psychotherapy to register and provide, under pains of perjury, background information, including his name, address, employer, educational background, professional experience, previous names and address, criminal convictions, disciplinary actions, suspensions, and legal actions in other areas and states, etc. The disclosure of this type of information is common in most professions, is vitally important for the protection of the public interest, and is easily defensible as a course of action for the City.

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[1] An argument could be made, albeit weak, that the state repeal now preempts any regulation at all.

In the case of Scientology, adoption and enfocement of such a provision would provide the public with vital information. Many Scientology "auditors" have backgrounds which belie their exaggerated claims of experience and expertise. Some of them have backgrounds which raise substantial questions about their moral character.

The information would inform the public about the background of "auditors". It would also assist members of the public who feel they have been wronged in seeking remedies at law by establishing facts regarding the whereabouts, affiliations, and histories of particular "auditors".

3) SUBSTANTIVE REGULATION. As noted, above, the City is now free to enact substantive regulations for the practice of psychotherapy (see footnote 1, above; see also, Bd. of Comm. v. Boswell, supra).

It is well-settled in American law that the regulation of psychological practice is a valid exercies of the state's police power. So long as the requirements relating to education, skill and certifying examination bear a direct, substantial and reasonable relationship to the practce of psychology, the state may set reasonable standards for determining qualification of those who hold themselves out as psychologists and may also grant to an administrative body the authority to enforce those standards. Oliver v. Com. Dept. of State, Pennsylvania Board of Psychologist Examiners, 404 A.2d 1386, 45 Pa. Commlth. 195, Nelles v. Bartlett, 145 N.W.2d 795, 5 Mich. App. 47, app. dism. cert. den., 88 S. Ct. 85, 389 U.S. 9, 19 L. Ed. Ed. 9 See 81 ALR 2d 791. Among the other regulated professionals are social workers, alchoholism counselors, and marriage and family counselors.

Licensing or certifying statutes, as typified by the repealed Florida statutes (Chapter 490), generally specify the qualifications for psychological practice:

1) Personal Characteristics such as being of "good moral character" and conformance to the "ethical standards of the profession as adopted by the board". Some statutes particularize certain disqualifying acts such as homosexual behavior.

2) Formal Education as manifested by "entry level professional degrees" such as M.A.'s, Ed. M's, or PH.D.'s. Statutory schemes that fail to exempt on "grandfather" practitioners who have substantial experience but lack the requisite degrees have been stricken as deprivations of economic interests. See Berger v. Board of Psychological Examiners, 521, F.2d 1056 (D.D.C. 1975); Whittle v. State Board of Examiners of Psychologists, 483 P. 2d 328 (Okla. 1971,.

3) Practical Experience under the supervision of or association with a licensed psychologist. Florida required two (2) years or 4,000 hours of full-time experience in the field of psychology.

4) Examination by a state licensing or certification board. The Florida State Board of Examiners of Psychology consisted of five (5) licensed psychologists empowered to adopt rules of professional ethics and to examine by written or oral examinations. Such boards have discretion in their adminstration of statutory standards, but they may not develop standards different from or inconsistent withthe statute. Bloom v. Texas State Board of Examiners of Psychologists, 492 S.W. 2d (Tex. 1973).

With regard to the actual manner of practice, it should

be noted that, as with most professions, this is left to the common law or to the profession itself. Doctors and lawyers, for example, are ultimately subject to censure by their own profession or to malpractice suits. However, in the case of the medical profession, there are a number of specific acts which are subject to regulation. In most states, for example, a physician is prevented by statute from disclosing patient records without the patients consent; he must report occurrences of certain diseases to authorities; he must report the prescription of certain drugs, etc.

At the present time, the authors of this report do not recommend the enactment of general substantive regulations, although a caveat is given that these may become necessary in the future. There are several reasons for this recommendation. As noted above, there is some doubt, albeit weak, that the City has authority to do so. More significant is the fact that the regulation of professional practice has historically been left to professional bodies and the common law. There are, at the present time, a number of lawsuits pending around the United States regarding the practices of Scientology auditors. It is expected that these suits will result in a de facto standard of responsibility for Scientology auditors more effectively than could any form of municipal regulation.

At the same time, however, the authors of this report do recommend ordinances which regulate specific acts of psychotherapists. Primarily, practitioners should be prohibited from disclosing patient infromation without written consent of the patient. This is consistent with the dictates of common law and consistent with statutory regulation of the medical profession. There is a present need for such an ordinance in Clearwater.

F. MUNICIPAL AUTHORITY TO REGULATE EDUCATION

Chapter 232 of the Florida Statutes annotated regulates compulsory school attendance and child welfare with regard to education. The superintendent of schools for the local school district has the legal authority under F.S.A. Ch. 232.16 to enforce this statute. There is substantial evidence that many young children have lived in property owned by the Church of Scientology in Clearwater, who have not attended school as required. The City should initiate an investigation of this condition and take appropriate action. The time and cost limitations of this Report prevented further analysis.

G. MUNICIPAL AUTHORITY TO REGULATE IN AREAS OF PUBLIC HEALTH, SAFETY, LODGING, FIRE AND BUILDINGS

The time and cost limitations for this Report prohibited research and analysis in these subject areas. The First Amendment does not prohibit reasonable regulations in any of these areas.

There is evidence of conditions in buildings owned by the Church of Scientology which should raise legitimate concern with the City. These conditions include:

- hepatitis epidemics;
- people being prevented by force and intimidation from seeking medical attention;
- people being maintained on restrictive and unhealthy diets;
- people sleeping on a regular basis in hallways and on concrete floors;
- enforced loss of sleep used as a brainwashing technique; and
- deliberate deception of City Inspectors.

All of these conditions have been reported to us by clients who were present in Clearwater for varying periods of time and who are presently willing to testify before the City Commissioners in any investigative proceedings.

It should be noted, however, that this is primarily an enforcement question. Many of the conditions reported above are in violation of existing ordinances. There may be a need for additional legislation, however.