

V. APPLICATION OF MUNICIPAL LAW TO SCIENTOLOGY
ACTIVITIES, POLICIES, AND PRACTICES

A. APPLICATION OF THE PROPOSED CHARITABLE SOLICITATION ORDINANCE TO THE CHURCH OF SCIENTOLOGY

The various corporate entities of Scientology in the City of Clearwater are, taken together, the largest fundraising organization in the City which claims charitable status. Heretofore, Scientology has operated in almost total secrecy with regard to its operations and finances in the City. The ordinance is intended to give the City a legitimate means of investigating the affairs of Scientology, and to restrict the activities of Scientology if it obstructs an investigation or refuses to cooperate. The ordinance also gives the City the authority to seek abatement of specific acts which Scientology regularly engages in, and to warn the public of certain facts.

It must be noted that through many years of litigation with the Internal Revenue Service, the Food and Drug Administration, the United States Attorney's Office, the Pinellas County Tax Assessor, various agencies of foreign governments, and with private litigants, Scientology has consistently conducted itself in a profoundly rancorous, contentious, contemptuous, and deceptive manner. It may reasonably be expected that Scientology will behave in the same manner with the City Consumer Affairs Commissioner. Every means of legal obstruction will be employed. Every subpoena will be resisted. No document or witness will be produced voluntarily. Witnesses will be instructed to commit perjury, or assisted in removing themselves from the State. Officers who are successfully subpoenaed will resign their

offices. Accordingly, the City must be prepared to vigorously enforce the Ordinance. It is probable that effective enforcement could be a process that will take several years.

In view of the probable response of Scientology, the ordinance has been designed with several self enforcing mechanisms. Refusal to provide the Commissioner with requested information is itself grounds for restriction of solicitation activities. The notice and warning provisions of the ordinance also provide effective and easily implemented means of dealing with the probable intransigent response of the Scientologists. Also, the Commissioner is empowered to conduct investigations and receive information from other sources. Thus, the enforcement of the ordinance is not dependent whatsoever upon the receipt of any information from the Scientologists. In fact, it is anticipated that they will produce nothing. In all likelihood they will not even file a registration statement.

As noted, the main features of the ordinance are 1) disclosure; 2) notice and warning to the public; and 3) power to abate prohibited acts. The following is a detailed description of how each of these provisions may be expected to affect the Church of Scientology and the issues that may arise in the enforcement process:

1. Disclosure - The ordinance requires the Church to disclose information it has never disclosed and has fought for years in court with the Internal Revenue Service and the Pinellas County Tax Assessor to avoid dis-

closing.¹ The information, if disclosed, would give the City the avenues to effectively investigate the financial affairs of Scientology. Since the principal corporate entity in Clearwater is the Church of Scientology of California, the activities of the entire corporation would be relevant to the registration and investigation. If such information had been truthfully disclosed in the past, it would have shown unequivocally that the Church devotes a substantial portion of its funds to non-charitable activities, specifically, the financing of a massive campaign of criminal activity including burglaries, infiltrations, illegal surveillance, perjury, kidnapping, and extortion.

Inurement of personal profit to L. Ron Hubbard and members of his family is an issue of proof which the IRS met in the early 1970's and which the requested information, if produced, would undoubtedly demonstrate again. The requested information would also demonstrate the exact relationship between the Church of Scientology and its various commercial affiliates such as the World Institute of Scientology Enterprises.

¹It should be noted that neither of those agencies ever had as much information available to it as is presently available to the City of Clearwater. The availability of information to the City results from the criminal convictions in Washington, D.C., the large number of defections from the ranks of Scientology which followed those convictions, and the good communications which now exist for the first time among the many private citizens and government agencies around the world who are involved in litigation with Scientology.

Scientology will either default and refuse to produce information, or will produce false information. There are several reasons for this. First, it cannot make an honest disclosure of the amount of money if funnels into Guardian's Office activities or open these records to inspection without incurring public scrutiny of the nature of Guardian's Office activities. As described elsewhere in this report, these are primarily criminal and tortious in nature.

Second, Scientology cannot afford to make known to its own members the details of its finances. Full disclosure of the extent of Scientology's assets and the ways in which it spends its money would deprive it of all justification for the exorbitant prices it charges for its "services".

Finally, Scientology cannot reveal its connections to its commercial affiliates or to Hubbard and his family since these are evidence of non-charitable uses of funds.

2. Notice and Warning - Refusal by Scientology to register or cooperate with an investigation, or commission of prohibited acts, give the Commissioner authority to publish and post warnings to the public. The Commissioner is further authorized to seek permission of the Court to post warning notices on the premises of the Church in a manner calculated to give reasonable notice.

This provision would have a significant impact on Scientology operations. Many of the people who come to

Clearwater are relatively new to Scientology. Wealthy people in particular, regardless of where they make their initial contact with Scientology, are soon solicited by "Flag" agents who encourage them to go to Clearwater and make payments to the organization of thousands of dollars. Often these people are given a special "kid glove" treatment. They are always told that Scientology is a charitable, non-profit organization. A strongly worded warning from the Commissioner would give people an opportunity to reflect on the wisdom of their payment while they are still capable of making an intelligent choice. It would give them access to information which the Scientologists specifically conceal. More important, it would notify them that the City has jurisdiction and an interest in the affairs of the organization and can entertain complaints from individuals. This would give defrauded individuals a place to seek a remedy and counteract the fear and isolation which the Scientologists intentionally create.

3. Prohibited Acts - The prohibited acts section of the ordinance, if vigorously enforced, would have a far reaching effect on many of the normal operations of Scientology. The Commissioner is given the power to abate these violations by seeking injunctions and fines. All of the prohibited acts can be fairly characterized as practices which are a proper subject of regulation. In the past, the Church of Scientology has committed most of these acts. The following is a description of Church practices which fit the definition of each pro-

hibited act. The letters correspond to the lettered acts in the ordinance. (See pages 162 - 164 , infra).

a) As noted in other parts of the Report, Scientology used funds for a period of years to support a massive campaign of criminal activity directed at government agencies and private citizens. Scientology has paid substantial sums of money to Hubbard and other members of his family. Scientology has used funds to oppress, harass, and bring law suits against private citizens. Funds have been used to support massive campaigns of false advertising. Funds have been used to create false front groups created solely for the purpose of libeling and destroying the reputations of private citizens. All of these acts are well beyond any reasonable definition of "charitable purpose".

b & c) See (a).

d) Application is prospective. It may reasonably be anticipated that if Scientology behaves as it has in the past and obey its own written internal policies, it will give false information.

e) Application is prospective. The Internal Revenue Service is presently in litigation with Scientology to take away its claimed tax exemption for the years 1970-72. It is expected that Scientology will lose the case. The IRS will then go after Scientology for subsequent years. The ordinance allows the City to base certain actions on IRS determinations.

f) The manner in which Scientology sells "auditing" is overtly fraudulent for many different reasons which are discussed elsewhere in this Report. This section of the ordinance allows the City to base certain actions upon any determination that Scientology has violated the consumer protection laws of the City, County, State of Florida, or United States. Generally, the fraudulent nature of Scientology's sales techniques are contained in their representation that auditing has a scientific basis, that it is confidential, that it has guaranteed results, and that refunds are offered to those who are dissatisfied.

g) See (f).

h) Part of the action against Scientology by the IRS in Los Angeles is an effort to take away the tax exemptions claimed by a number of individuals who gave money to Scientology and then took a tax deduction. If the IRS wins its cases, and Scientology thereafter represented that a deduction was available, a violation would occur.

i) Scientology has made a common practice of maintaining running accounts for many of its members which are termed "freeloader debts". Although Scientology takes the position publicly that monies paid to it are donations, the members are told that the "freeloader debt" is a legally enforceable debt

for which they can be sued, and in fact will be sued if they ever leave Scientology without permission.

j, k, & l) Scientology always promises that refunds will be given upon request. In fact, this is not so. A person who requests a refund is told he has to go through a complex refund application process which is actually calculated to do nothing except dissuade him from requesting a refund. Long delays and hidden charges are assessed. In fact, refunds are not given.

m) Scientology commonly acquires information in "auditing", a process which is akin to psychotherapy, and later employs that information in an attempt to solicit the person who was audited or a relative or friend of the person who was audited to purchase additional auditing. Intimate information obtained in auditing is exploited to make further sales by a malicious process called pressing "buttons", things which the person is known to feel concern or embarrassment about. Often people are approached at a very vulnerable moment, for example after a recent death or divorce, and subjected to heavy sales pressure.

n) It is anticipated that the Church will claim, that it cannot comply with the requirements of the ordinance because it does not keep sufficient records.

o) In its dealings with the IRS and in litigation with private individuals, the Church has attempted to frustrate investigations and discovery by changing its staff positions around, causing people to resign their position, etc.

p) The Church will always disclaim responsibility for the acts of any person. This provision requires the organizational affiliation of a solicitor to be established clearly and clearly fixes responsibility on the corporation for the acts of its solicitors.

q) See above. It is virtually certain that the Church will violate this provision in some way.

r) See above. It is virtually certain that the Church will violate this provision.

**PROPOSED ORDINANCE REQUIRING REGISTRATION STATEMENTS
FROM ORGANIZATIONS INTENDING TO ENGAGE IN
SOLICITATION OR SOLICITATION ACTIVITIES**

The following proposed ordinance is set forth in a preliminary form. It is intended to be consistent with modern Constitutional principles. Considerable effort was made to draft an ordinance which would withstand a Constitutional attack in court.

The ordinance is also drafted in view of the Florida Solicitation of Charitable Funds Act (s. 469.02 et seq.). The proposed

ordinance is intended to complement existing laws by addressing problems which are unique to the City of Clearwater and not adequately covered by state law.

As previously stated, the main features of the ordinance are 1) aggressive disclosure and warning provisions; 2) powers granted to a city official to investigate and abate specific prohibited acts. All of the contemplated prohibited acts are regularly occurring in the City of Clearwater.

Commission hearings prior to the adoption of this ordinance could develop a record showing the widespread occurrence of the types of things which the ordinance seeks to prohibit, and would strengthen the ordinance against Constitutional attack and develop public support for its passage.

THE PROPOSED ACT

DEFINITIONS

1) "Solicitation" means the request directly or indirectly for money, credit, property, financial assistance, or other thing of value on the plea or representation that such money, credit, property, financial assistance, or other thing of value will be used for a charitable purpose as those purposes are defined in this part, including the following methods:

a) Any oral or written request.

b) The making of any announcement in the press or electronic media in which any member of the public is requested to pay money to a charitable organization in the City of Clearwater.

c) The distribution or circulation, posting or publishing of any handbill written advertisement, or publication which directly or indirectly encourages payment of money to a charitable organization in the City of Clearwater.

d) The sale of, offer of, or attempt to sell any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, tangible items, course or course of study, or service in connection with which any appeal is made for any charitable purpose, or when the name of a charitable organization is used or referred to in such an appeal as an inducement or reason for making any such sale, or when, in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to or used for a charitable purpose.

EXEMPTIONS

The registration requirements of this Chapter shall not apply to a) charitable organizations which receive less than \$100,000 per calendar year in contributions; b) collections or contributions during the regular worship services of any church or religious organization or the meetings or exercises of any lodge, fraternal order, of similar organization; c) the offering for sale or auction of any goods, services, of things of value upon the representation that the proceeds thereof are for a charitable purpose, where the proceeds thereof do not exceed \$25,000 in any calendar year.

Power of Consumer Affairs Officer to Register and Investigate Charitable Solicitations

1) The Consumer Affairs Officer of the City of Clearwater is hereby vested with the general authority, power, and jurisdiction to enforce the provisions of this chapter.

2) The Consumer Affairs Officer may make such rules as he deems necessary from time to time to implement the provisions of this chapter, and may require from any organization subject to this chapter any reports and information he deems necessary for the administration of this chapter. The Commissioner shall have the power to prescribe forms for registration, disclosure, and other purposes, to adopt procedures, and when necessary, to hold hearings and make adjudications as provided in this chapter and make recommendations to appropriate prosecuting attorneys for enforcement of any penal provision of this chapter.

3) In addition to the authority granted the Commissioner by this Chapter, he may commence and maintain in a court of competent jurisdiction all proper and necessary actions and proceedings to enjoin and abate any act prohibited by this chapter, or to enforce any subpoena issued by the Commissioner or to seek any injunction authorized by this chapter.

4) The Commissioner, upon his own motion or upon the complaint of any person, may, if he has reasonable ground to suspect a violation of this chapter, investigate any charitable organization, professional fund-raising counsel, or professional solicitor to determine whether such organization, counsel, or solicitor has violated the provisions of this chapter or the rules and regulations promulgated by the Commissioner, or has filed any statement or information required under this chapter which contains false or misleading statements.

5) All financial records of any professional solicitor or charitable organizations which pertain to the solicitation and expenditure of contributions received shall, upon demand, be available to the Commissioner for inspection and investigation and the term "financial records" shall be deemed to include banking records and statements, checks, drafts, receipts, and papers of any description which indicate the receipt or expenditure of funds. However, names, addresses, and identities of contributors and amounts contributed by them shall be exempt from the provisions of s. 119.07(1) of the public records law; shall not be disclosed by the Commissioner; and shall be removed from the records and the custody of the Commissioner at such time that such information is no longer necessary for the enforcement of this chapter and shall not be disclosed by the Commissioner.

6) The Commissioner may enter into reciprocal agreements with the appropriate authority of any other government entity for the purpose of exchanging information with respect to organizations subject to the provisions of this chapter.

7) For purposes of enforcing the provisions of this chapter and making investigations of any violation thereof, and for purposes of investigating the practices and business methods of any organizations to determine if there have been violations of this chapter, the Commissioner shall have the power to subpoena and bring before it any person in the state and may require the production of papers it deems necessary and administer oaths and take depositions of any such person so subpoenaed. The Commissioner shall have the power to effect service of process of subpoenas. Upon failure of a person without lawful excuse to obey a subpoena issued and served by the Commissioner, the Commissioner may apply to the Circuit Court for an order compelling compliance.

8) In addition to all other powers and duties created by this Chapter, the Commissioner is empowered to receive and investigate complaints from any individual who claims to have been defrauded, deceived, or injured by the commission of any act prohibited by this Chapter as a result of a solicitation or solicitation activities in the City of Clearwater by an organization subject to this Chapter. The Commissioner may conduct hearings regarding any such complaint, after notice in writing to all parties affected. The Commissioner may make findings and recommendations, fashion order and remedies, and seek enforcement of any such orders, in the same manner as provided for in the City of Clearwater consumer protection Act. (Draft copy of such act included with this proposal).

Registration

1) Every charitable organization in the City of Clearwater which intends to solicit contributions in Clearwater, or to sell or render any goods or services in Clearwater in connection with a solicitation for a contribution, shall, prior to any solicitation, file a registration statement with the Commissioner of Consumer Affairs on the forms prescribed by him. The registration shall contain:

a) The name of the organization and the purpose for which it was organized.

b) The principal address of the organization and the addresses of any officers in the City.

c) The names and addresses of any chapters, branches, and affiliated organization in the City.

d) The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax exempt status under the Internal Revenue Code of the United States, the laws of any state, and the laws of any county or municipality.

e) The names and addresses of all officers, directors, trustees, and the principal salaried executive staff officers.

f) A copy of a financial statement prepared pursuant to a recognized uniform system of accounting which shall be prescribed or approved by the Commissioner, audited with an opinion of an independent certified public accountant, and covering complete disclosure of all the fiscal activities, of the charitable organization during the preceding year. Said report shall conform to the "Audit Guides" published by the American Institute of Certified Public Accountants, and as may be modified from time to time by said Institute.

g) The names and addresses of every person with any responsibility for receiving, depositing, handling, holding, or disbursing any funds on behalf of the organization, and a statement of each person's responsibility.

h) Whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others.

i) Whether the organization is authorized by any governmental authority to solicit contributors, and whether it has ever been enjoined or restricted in its manner of solicitation by any court or government agency.

j) The specific purpose or purposes for which contributions shall be used.

k) The name or names under which it intends to solicit contributions.

l) The cost of fundraising incurred or anticipated to be incurred by the organization, including a breakdown of all expenses and a statement of such costs as a percentage of contributions received. Said information shall include:

1) The cost of manufacturing, purchasing, renovating, or repairing any merchandise which is offered for sale in connection with a solicitation.

2) The cost of providing any service which is offered in connection with a solicitation.

3) The cost of any shows, theatrical presentations, lectures, or courses offered in connection with a solicitation.

m) A statement of the amount of funds expended by the organization to support or defend litigation.

n) A description of all commercial fundraising activities conducted by the organization and a statement of the amount earned at each activity. "Commercial fundraising activities" shall include:

1) The sale of goods and articles for a profit.

2) The provision of services for a charge in excess of their cost.

3) Collection of rent on real estate and interest on money loaned.

4) Any capital gains realized by the sale of any capital asset.

5) Interest and dividends earned on stocks, bonds, and securities.

o) The name and address of each person or entity to whom, in the preceding year, the organization paid more than \$50,000 for any reason whatsoever.

p) The name and address of each person having custody of any financial record of the organization.

q) A narrative description of the promotional plan together with copies of all advertising material which has been prepared for distribution.

r) Such other information as may be reasonably required by the Commissioner for the public interest or for the protection of contributors.

2) The registration required under this section shall be filed and signed under oath by the chief executive officer of the organization. If the chief executive officer of the organization does not maintain a residence of principal office in the City of Clearwater, the registration shall additionally be endorsed and signed under oath by the highest ranking officer of the organization who resides or maintains a residence in the City of Clearwater. If said registration statement contains information the knowledge of which, or the documentary evidence of which is possessed entirely by any person or persons who do not reside or maintain an office or residence in the City of Clearwater, the statement shall designate any such information, and include the name and address of any such person, and specify the information and documents which any such person possesses.

3) No organization shall withhold any information of documents required to be produced under this chapter or requested by the Commissioner during an investigation on the basis that the documents or persons who possess the information are not located in the City of Clearwater. Any refusal to produce documents or information for such reason shall constitute sufficient grounds for the Commissioner to seek and obtain an injunction against all solicitation activities by the organization within the City of Clearwater.

4) If there is any change in fact, policy, or procedure that would alter the information given in any registration statement, the registrant shall notify the Commissioner in writing thereof within ten days.

5) Except as otherwise provided in this chapter, registration statements and all other documents and information required to be produced under this chapter by the Commissioner shall become public records in the office of the Commissioner and shall be open to the general public under such conditions as the Commissioner may prescribe.

6) If the Commissioner determines that any organization subject to this chapter has failed to file a registration statement or has filed a statement which does not contain information sufficient for the purposes of this chapter, he shall notify said organization in writing and specify what information it has failed to produce. If any such organization fails for fifteen consecutive days after receipt of notice to provide such specified information without legal excuse, the Commissioner shall declare a default, and such default shall constitute sufficient grounds for the Commissioner to seek and obtain an injunction against all solicitation activities by the organization in the City of Clearwater.

Maintainance of Records

Every organization subject to the provisions of this chapter shall, in accordance with rules and regulations promulgated by the Commissioner, keep true fiscal records as to its activities in conformity with the principles set out in the "Audit Guides" published by the American Institute of Certified Public Accountants. Such records shall be maintained for a period of three years after the end of each fiscal year of the organization and shall be made available to the Commissioner upon request.

Notice and Publication of Warnings Concerning Certain Charitable Organizations

If the Commissioner finds that any charitable organization subject to this chapter has failed to file a registration statement, or has filed a statement containing insufficient or false information, or has engaged in any act prohibited by this chapter, he may, in addition to all other actions authorized by this chapter, publish and promulgate notice to the public containing the following information: a) that the particular organization is subject to the provisions of this chapter; b) that the Commissioner is authorized to receive and investigate complaints relating to fraud and violations of this chapter; c) that the particular organization has failed to register, or provide sufficient information, or has engaged on prohibited acts, as the case may be. The publication may contain a description of the prohibited acts found to have been committed. The notice and publication may be placed in electronic and printed media and may be publically posted in a manner calculated to give reasonable notice to all persons affected. Said notice may be termed or entitled a WARNING. In addition to the above, the Commissioner may apply to the Court for an order that the Sheriff post such notice at conspicuous places on the premises of the organization.

Prohibited Acts

No organization subject to the provision of this chapter, and no agent, employee, or officer of any such organization, shall engage in any of the following prohibited acts:

a) use, expenditure, or allotment of solicited funds for any purpose other than the charitable purposes of the organization.

b) use of any portion of solicited funds to plan, support, or execute any conduct which is criminal or illegal under the laws of the City of Clearwater, the State of Florida, or the United States.

c) use of any portion of solicited funds for the profit or enrichment of any person; provided, however, that payment of reasonable salaries to employees in exchange for substantial services shall not constitute a violation of this section, nor shall reasonable commissions paid to professional fund-raisers.

d) making of any false statement or giving of any false information pursuant to the provisions of this chapter.

e) commission of any act, acts, or course of conduct resulting in loss of the organizations tax exemption pursuant to s. 501(c)(3) of the Internal Revenue Code of 1954, or of any corresponding section of any subsequently enacted Federal Revenue Act.

f) commission of any violation of the consumer protection laws of the City of Clearwater, Pinellas County, the State of Florida, or the United States, in the sale of any goods or services in connection with which any appeal is made for a charitable purpose, or the name of any charitable organization or purpose is used as an inducement for the sale, or any statement is made that the whole or any part of the proceeds from any such sale will be used for a charitable purpose.

g) use of any scheme or artifice to defraud or obtain money or property by means of any false statement, representation, or promise.

h) falsely representing that any contribution will entitle the donor to a Federal or State tax deduction.

i) use of unconscionable pressure or threats to obtain a donation, or falsely representing to any person that a pledge or promise to make a contribution constitutes a legally enforceable obligation under circumstances in which no such legal obligation exists.

j) promising any person that a contribution will be refunded upon request, and thereafter failing to promptly make a refund which has been requested.

k) promising any person that refunds of contributions will be made upon request without providing such person, at the time such representation is made, with a written statement of the terms and conditions upon which refunds are made.

l) promising any person that refunds will be made without maintaining adequate records and reserve funds to allow for prompt refunds upon request.

m) receiving or disclosing confidential information about any person for purposes of engaging in solicitation of money or property, under circumstances in which the person who provided the confidential information was not aware that it would be used for solicitation purposes and did not thereafter consent to its use for solicitation purposes. For purposes of this part "confidential information" means information obtained upon a promise that it would be kept in confidence and shall include, inter alia, records of confidential information kept by attorneys, physicians, clergymen, and counsellors.

n) failure to maintain any records required under this chapter.

o) failure to make any disclosure required under this chapter or to report any change of condition as required by this chapter.

p) solicitation by any person on behalf of any organization without written authorization of a presently active officer of the organization whose name has been disclosed pursuant to this chapter.

q) obstruction of any investigation commenced under this chapter.

r) willfull failure to honor a subpoena duly issued and served by the Commissioner.

Enforcement and Penalties

1) If, after investigation, the Commissioner has reasonable grounds to believe that an organization subject to this Chapter has failed to file a registration statement as required herein, or has filed a statement which is false or misleading, or has filed a statement containing insufficient information and has failed to correct such insufficiency after notice of default, he may bring an action in the District Court to enjoin any solicitation or solicitation activities by the organi-

zation in the City of Clearwater for a period of time sufficient to deter such failures but not to exceed one year. The Court, if it finds that such violations or failures have occurred, shall give injunctive relief accordingly.

2) If, after investigation, the Commissioner has reasonable grounds to believe that an organization subject to this Chapter has engaged in any of the acts prohibited herein, he shall apply to the District Court for injunctive relief to abate such violations. The Court, if it finds that such violations have occurred, shall assess a fine in an amount sufficient to deter future violations, but not exceed \$2,500 per violation. In addition, the Court may award the Commissioner attorney's fees in an amount sufficient to cover costs of enforcement. As provided herein, the Court may authorize the posting of notices in conspicuous places on the premises of any organization which has been guilty of prohibited acts sufficient to warn the public of commission or prohibited acts by the organization.

3) In addition to the foregoing, any person who willfully and knowingly gives any false information to the Commissioner in filing statements and reports required herein, or who willfully and knowingly obstructs an investigation of the Commissioner, or who willfully and knowingly leaves the State or assists any person to leave the State for purposes of avoiding the provisions of this part, shall be punishable (punishment is to be established by City Commission). If the Commissioner becomes aware of any such violation, he shall report to the appropriate prosecuting attorney and shall make available to the prosecuting attorney all records and documents which he may require.