

**BOROUGH OF OCEAN GATE**

**COUNCIL AGENDA**

**November 18, 2020**

**CALL TO ORDER:**

**SUNSHINE STATEMENT:** Notice of this meeting was advertised in the Asbury Park Press issue of September 26, 2020 and posted in the Municipal Office Building, Adrian Hall and the Ocean Gate Post Office.

**SALUTE TO THE FLAG AND MOMENT OF SILENCE**

**ROLL CALL:** Mayor Kennedy, Council President Kendrick, Councilwoman Nicastro, Councilman Haug, Councilman Martinez, Councilwoman Padham-Iaria, Councilman Livingston.

**PRIVILEGE OF THE FLOOR LIMITED TO 3 MINUTES (AGENDA OR NON-AGENDA):**

Report of James Gluck, Municipal Attorney

**REPORT OF MAYOR KENNEDY**

**CORRESPONDENCE**

**REPORTS OF COUNCIL**

Council President Kendrick  
Councilwoman Nicastro  
Councilman Haug  
Councilman Martinez  
Councilwoman Padham-Iaria  
Councilman Livingston

**ORDINANCE NO. 636-20 AN ORDINANCE OF THE BOROUGH OF OCEAN GATE, COUNTY OF OCEAN, STATE OF NEW JERSEY GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF NEW JERSEY, LLC. TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONSSYSTEM IN THE MUNICIPALITY OF OCEAN GATE, OCEAN COUNTY, NEW JERSEY**

Motion to Open Public Hearing for Ord. 636-20: \_\_\_\_\_ Second: \_\_\_\_\_  
Roll call vote: Kendrick, Nicastro, Haug, Martinez, Padham-Iaria, Livingston

Motion to Close Public Hearing for Ord. 636-20: \_\_\_\_\_ Second: \_\_\_\_\_  
Roll call vote: Kendrick, Nicastro, Haug, Martinez, Padham-Iaria, Livingston

Motion to adopt Ord. 636-20: \_\_\_\_\_ Second: \_\_\_\_\_  
Roll call vote: Kendrick, Nicastro, Haug, Martinez, Padham-Iaria, Livingston

**PRIVILEGE OF THE FLOOR LIMITED TO 3 MINUTES (AGENDA ITEMS ONLY):**

**CONSENT AGENDA**

**The items listed below are considered to be routine by the Borough of Ocean Gate and will be enacted by one motion. There will be no formal discussion of these items. If discussion is desired, this item will be removed from the Consent Agenda and will be considered separately.**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_

Roll call vote: Kendrick, Nicastro, Haug, Martinez, Padham-Iaria, Livingston

RESOLUTION 2020-158 Setting 2021 Meeting Schedule

RESOLUTION 2020-159 School Choice Week

RESOLUTION 2020-160 Authorization to Advertise for Bids

RESOLUTION 2020-161 Payment of Bills

**Motion to adjourn:**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_

Roll call vote: Kendrick, Nicastro, Haug, Martinez, Padham-Iaria, Livingston

## ORDINANCE NO. 636-20

**AN ORDINANCE OF THE BOROUGH OF OCEAN GATE, COUNTY OF OCEAN, STATE OF NEW JERSEY GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF NEW JERSEY, LLC. TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONSSYSTEM IN THE MUNICAPALITY OF OCEAN GATE, OCEAN COUNTY, NEW JERSEY**

**THEREFORE, BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Ocean Gate, State of New Jersey, as follows:

### **SECTION 1. PURPOSE OF THE ORDINANCE.**

The Borough hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets alleys, sidewalks, easements, public ways and public places in the Borough, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus, and equipment as may be necessary for the construction, operation and maintenance in the Borough of a cable television and communications system.

### **SECTION 2. DEFINITIONS.**

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms in supplemental to those definitions of the Federal Communications Commission (“FCC”) rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the Federal and State definitions:

- a. “Borough” or “Municipality” is the Borough of Ocean Gate, County of Ocean, State of New Jersey.
- b. “Company” or “Comcast” is the grantee of rights under this Ordinance and is known as Comcast of New Jersey, LLC.
- c. “Act” or “Cable Television Act” is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.
- d. “FCC” is the Federal Communications Commission.
- e. “Board” or “BPU” is the Board of Public Utilities, State of New Jersey.
- f. “Office” or “OCTV” is the Office of Cable Television of the Board.
- g. “Basic Cable Service” means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.

h. “Application” is the Company’s Application for Renewal of Municipal Consent.

i. “Primary Service Area” or “PSA” consists of the area of the Borough currently served with existing plant as set forth in the map annexed to the Company’s Application for Municipal Consent.

### **SECTION 3. STATEMENT OF FINDINGS.**

A public hearing concerning the consent herein granted to the Company was held after proper public notice pursuant to the terms and conditions of the Act. Said hearing having been held and fully open to the public, and the Borough having received all comments regarding the qualifications of the Company to receive this consent, and the representations of the Company that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company’s operating and construction arrangements are adequate and feasible.

### **SECTION 4. DURATION OF FRANCHISE.**

The non-exclusive Municipal Consent granted herein shall expire ten (10) years from the date of expiration of the previous Certificate of Approval issued by the Board.

In the event that the Borough shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Borough shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Borough shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

### **SECTION 5. FRANCHISE FEE.**

Pursuant to the terms and conditions of the Act, and, except as where higher payment is otherwise required by the applicable law and regulations (including N.J.S.A. 48:5A-30), the Company shall, during each year of operation under the consent granted herein, pay to the Borough two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Borough or any higher amount permitted by the Act or otherwise allowable by law.

### **SECTION 6. FRANCHISE TERRITORY.**

The consent granted under this Ordinance for the renewal of the franchise shall apply to the entirety of the Borough and any property subsequently annexed hereto.

### **SECTION 7. EXTENSION OF SERVICE.**

The Company shall be required to proffer service to any residence along any public right-of-way in the Primary Service Area, as set forth in the Company’s Application. Any extension of plant beyond the Primary Service Area shall be governed by the Company’s Line Extension Policy, as

set forth in the Company's Application, with a HPM ("homes-per-mile") of thirty-five (35) dwellings per linear mile from the nearest active trunk or feeder line from which a usable cable signal may be obtained. For purposes of this section and the Company's implementation of the LEP, a home shall only be counted as a "dwelling unit" if such home is occupied and within two hundred seventy-five (275) feet of the public right of way.

## **SECTION 8. CONSTRUCTION REQUIREMENTS.**

a. Restoration. In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as reasonably good a condition as existed prior to the commencement of said work.

b. Relocation. If at any time during the period of this consent, the Borough shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Borough, shall remove, re-lay, or relocate its equipment, at the expense of the Company. In requiring Company to remove, re-lay, or relocate any portion of its property, the Borough shall treat Company the same as, and require no more of Company than, any other similarly situated entity utilizing the Public Rights of Way, including with respect to reimbursement of costs.

c. Removal or Trimming of Trees. During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, or other public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

d. Installation of Equipment. The Company shall install equipment in the same location and manner as existing public utilities whenever possible, in order to minimize the impact of same on surrounding property.

## **SECTION 9. CUSTOMER SERVICE.**

In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1, et seq. and all applicable Federal and State statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service.

a. The Company shall continue to comply fully with all applicable Federal and State statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.

b. The Company shall continue to fully comply with all applicable Federal and State statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.

## **SECTION 10. MUNICIPAL COMPLAINT OFFICER.**

The Office of Cable Television is hereby designated as the Complaint Officer for the Borough pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Borough shall have the right to request copies of records and reports pertaining to complaints by Borough customers from the OCTV.

## **SECTION 11. LOCAL OFFICE.**

During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters.

## **SECTION 12. PERFORMANCE BOND.**

During the life of the franchise the Company shall give to the Borough a bond in the amount of twenty-five thousand dollars and zero cents (\$25,000). Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its Application for Municipal Consent incorporated herein.

## **SECTION 13. SUBSCRIBER RATES.**

The rates of the Company shall be subject to regulation as permitted by Federal and State law.

## **SECTION 14. COMMITMENTS BY THE COMPANY.**

a. The parties agree that Comcast will provide Basic Cable Service to Borough Hall, First Aid, Fire Department, and the Ocean Gate School and has the right in accordance with applicable law to deduct the fair market value of those services from franchise fees. Comcast will notify the Borough if it intends to implement said offset and the fair market value of those services at least sixty (60) days prior to doing so.

b. The Communications Act of 1934, as amended (47 U.S.C. 543(b)), allows the Company to itemize and/or identify: (1) the amount on the subscriber bill assessed as a franchise fee and the identity of the governmental authority to which the fee is paid; (2) the amount on the bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, education, and/or governmental access channels or the use of such channels; and (3) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The Company reserves its external cost, pass-through rights to the full extent permitted by law.

## **SECTION 15. EDUCATION AND GOVERNMENTAL ACCESS**

a. The Company shall continue to make available to the Borough one governmental access channel. The channel is currently administered by the Borough of Ocean Gate.

b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for access use. An educational or government (“E/G”) access user acquires no property or other interest by virtue of the use of a channel so designated and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.

c. The Company will maintain the cable, modulators, and equipment necessary for the Borough or its designee to send a signal to the Company, and to receive the return feed of the signal.

d. The Company shall not exercise editorial control over any educational or governmental use of channel capacity, except Company may refuse to transmit any educational or governmental access program or portion of any educational or governmental access program that contains obscenity, indecency, or nudity.

e. Government Access. “Government Access” shall mean noncommercial use by the Borough for the purpose of showing the local government at work.

f. Company Use of Fallow Time. Because blank or underutilized E/G channels are not in the public interest, in the event the Borough or other qualified E/G access users elect not to fully program their E/G access channel, Company may program unused time on those channels subject to reclamation by the Borough upon no less than sixty (60) days written notice.

g. Indemnification. The Borough shall indemnify Company for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on the E/G channel and from claims arising out of the rules for or administration of E/G access channel and its programming.

h. Within six (6) months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide to the Borough a one-time E/G Access Capital Grant in the amount of eight thousand dollars and zero cents (\$8,000.00) to meet the E/G access capital needs of the community.

i. The Communications Act of 1934, as amended (47 U.S.C. 543(b)), allows the Company to itemize and/or identify: (1) the amount on the subscriber bill assessed as a franchise fee and the identity of the governmental authority to which the fee is paid; (2) the amount on the bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, education, and/or governmental access channels or the use of such channels; and (3.) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The Company reserves its external cost, pass-through rights to the full extent permitted by law.

## **SECTION 16. EMERGENCY USES.**

a. The Company will comply with the Emergency Alert System (“EAS”) rules in accordance with applicable Federal and State statutes and regulations.

b. The Company shall in no way be held liable for any injury suffered by the Borough

or any other person, during an emergency, if for any reason the Borough is unable to make full use of the cable television system as contemplated herein.

#### **SECTION 17. LIABILITY INSURANCE.**

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of one million dollars (\$1,000,000) covering liability for any death, personal injury, property damages, or other liability arising out of its construction and operation of the cable television system, and an excess liability (or “umbrella”) policy in the amount of five million dollars (\$5,000,000).

#### **SECTION 18. INCORPORATION OF THE APPLICATION.**

All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable Federal or State law.

#### **SECTION 19. COMPETITIVE EQUITY.**

Should the Borough grant Municipal Consent for a franchise to construct, operate, and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

#### **SECTION 20. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or Federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

#### **SECTION 21. PROPRIETARY INFORMATION**

The Company shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Borough agrees to treat any information disclosed by the Company as confidential and only to disclose it to those employees, representatives, and agents of the Borough that have a need to know in order to enforce this Ordinance and who agree to maintain the confidentiality of all such information.

The Company shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable Federal or State privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the



Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Company to be competitively sensitive. The Company may make proprietary or confidential information available for inspection—but not copying or removal—by the Borough’s representative. In the event that the Borough has in its possession and receives a request under the Open Public Records Acts (“OPRA”), N.J.S.A. 47:1A-1 et seq., or the common law right to know for information the Company has designated as confidential, trade secret, or proprietary, the Borough shall notify the Company of such request and cooperate with Company in opposing such request.

**SECTION 22. FORCE MAJEURE.**

The Company shall not be liable or responsible for, in whole or in part, any delay or failure to perform any of its obligations hereunder which may result from accidents, pandemics, floods, fires, earthquakes, tornadoes or other acts of God; war, acts of war (whether or not a declaration of war is made), civil disobedience; civil disturbance, sabotage or vandalism, customer tampering or interference, or act of public enemy; strikes, other labor or job actions or unavailability of materials or equipment; or other events or circumstances beyond the reasonable control of the Company (each, a “Force Majeure Event”). The Company shall give the Borough prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event.

**SECTION 23. THIRD PARTY BENEFICIARIES.**

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

**SECTION 24. NEW DEVELOPMENTS**

The Borough, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Company with at least fifteen (15) days advance written notice of an available open trench for the placement of necessary cable.

**SECTION 25. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

**NOTICE**

**PUBLIC NOTICE** is hereby given that the foregoing Ordinance was introduced and passed on first reading of the Borough Council of Ocean Gate, in the County of Ocean, State of New Jersey, held on October 21, 2020, and will come on for a second reading, public hearing and final passage at a regular meeting of said Borough Council to be held on November 18, 2020, at Borough

Council Chambers, 801 Ocean Gate Avenue, Ocean Gate, New Jersey, at 7:00 P.M., or as soon thereafter as the matter can be reached, at which last mentioned date, hour and place any person desiring to be heard either for or against the adoption of the within Ordinance will be given an opportunity to be so heard.

**INTRODUCED:**

**ADOPTED:**

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Ileana Vazquez-Gallipoli, R.M.C.

Municipal Clerk

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Paul J. Kennedy

Mayor

**OCEAN GATE RESOLUTION 2020-158**  
**SETTING 2021 MEETING SCHEDULE**

In compliance with Chapter 231, P.L. 1975, and in accordance with a resolution of the Mayor and Council of the Borough of Ocean Gate, adopted on November 18, 2020 the following are the dates and times of the Council Re-organization, Council Workshop Meetings, Budget Meeting and Council Meetings of the Mayor and Council of the Borough of Ocean Gate for 2020. All meetings are open to the public. However, from time to time a portion of the meeting may be closed to discuss personnel, contracts, and/or matters of litigation. Formal action may be taken.

<b>RE-ORGANIZATION MEETING/ BUDGET MEETING</b>	<b>COUNCIL WORKSHOP</b>	<b>COUNCIL MEETINGS</b>
January 1 (Noon)	January 13	January 27
February 20 (9:00am Budget)	February 10	February 24
	March 10	March 24
	<b>*No Meeting</b>	April 14
	<b>*No Meeting</b>	<b>May 5 @1:00pm</b>
	June 2	June 30
	<b>*No Meeting</b>	July 28
	<b>*No Meeting</b>	August 25
	<b>*No Meeting</b>	September 30
	<b>*No Meeting</b>	<b>October 20 @1:00pm</b>
	<b>*No Meeting</b>	November 10
	December 8	December 29

All meetings will be held in the main Council room at the Municipal Office Complex, 801 Ocean Gate Avenue at 7:00 pm unless otherwise noted.

**CERTIFICATION**

I, Ileana Vazquez-Gallipoli Municipal Clerk of the Borough of Ocean Gate, hereby certify that the foregoing resolution is a true and correct copy of a resolution adopted at Council Meeting held on November 18, 2020.

\_\_\_\_\_  
Ileana Vazquez-Gallipoli, RMC, CMR  
Municipal Clerk

**RESOLUTION 2020-159**

**RECOGNIZING JANUARY 24-30, 2021 AS SCHOOL CHOICE WEEK**

WHEREAS, all children in Ocean Gate should have access to the highest quality education possible; and

WHEREAS, the Borough of Ocean Gate recognizes the important role that an effective education plays in preparing all students in Ocean Gate to be successful adults; and

WHEREAS, quality education is critically important to the economic vitality of Ocean Gate; and,

WHEREAS, Ocean Gate is home a high-quality public school in addition to families who educate their children in the home; and

WHEREAS, education variety not only helps to diversify our economy, but also enhances the vibrancy of our community; and

WHEREAS, Ocean Gate has many high-quality teaching professionals in all types of school settings who are committed to education our children; and

WHEREAS, School Choice Week is celebrated across the country by millions of students, parents, educators, schools and organizations to raise awareness of the need for effective educational options;

NOW, THEREFORE BE IT RESOLVED, that the Governing Body of the Borough of Ocean Gate hereby recognize January 24-30, 2021 as Ocean Gate School Choice Week, and we call this observance to the attention of all of our citizens.

**CERTIFICATION**

I, Ileana Vazquez-Gallipoli Municipal Clerk of the Borough of Ocean Gate, hereby certify that the foregoing resolution is a true and correct copy of a resolution adopted at Council Meeting held on November 18, 2020.

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Ileana Vazquez-Gallipoli, RMC, CMR  
Municipal Clerk

**RESOLUTION 2020-160**

**AUTHORIZATION TO ADVERTISE FOR ELECTRONIC CREDIT/DEBIT CARD  
PAYMENT SERVICES**

BE IT RESOLVED by the Governing Body of the Borough of Ocean Gate, in the County of Ocean, State of New Jersey, authorizing advertising for bids for a two-year contract for Electronic Credit/Debit Card Payment Services; and

BE IT FURTHER RESOLVED, that a certified copy be forwarded to,

1. Mayor and Council
2. Chief Financial Officer
3. Fiscal Officer

**CERTIFICATION**

I, Ileana Vazquez-Gallipoli Municipal Clerk of the Borough of Ocean Gate, hereby certify that the foregoing resolution is a true and correct copy of a resolution adopted at Council Meeting held on November 18, 2020.

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Ileana Vazquez-Gallipoli, RMC, CMR  
Municipal Clerk

RESOLUTION 2020-161

AUTHORIZATION FOR PAYMENT OF BILLS

WHEREAS, the Borough Council has carefully examined all vouchers presented to the Borough for payment of claims; and

WHEREAS, after due consideration of said vouchers, the Borough Council has approved the payment of same; and

WHEREAS, the Chief Financial Officer has certified that the bill list has been audited and is in order for payment and funds totaling \$485,984.58 available in the respective accounts as set forth below;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Borough Council of the Borough of Ocean Gate, County of Ocean, as follows:

1. The said approved 2020 vouchers amounting to the sum of \$485,984.58 the same are hereby authorized to be paid on November 18, 2020.

BE IT FURTHER RESOLVED, that the Municipal Clerk be, and is hereby directed to file the bill list in the Municipal Clerk's Office.

CERTIFICATION

I, Ileana Vazquez-Gallipoli, Municipal Clerk of the Borough of Ocean Gate, County of Ocean, State of New Jersey, hereby certify that the foregoing resolution is a true and correct copy of a resolution adopted at a Council Meeting held on November 18, 2020.

\_\_\_\_\_  
Ileana Vazquez-Gallipoli, RMC, CMR  
Municipal Clerk