

Chapter 97
MEDIATION OPTION IN PLANNING AND ZONING

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[HISTORY: Adopted by the Town Board of the Town of Rochester 10-7-1999 by L.L. No. 4-1999. Amendments noted where applicable.]

GENERAL REFERENCES

Planning Board — See Ch. 37.
Subdivision of land — See Ch. 125.

Zoning — See Ch. 140.

§ 97-1. Short title and applicability.

The title of this chapter is “Mediation Option In Municipal Planning and Zoning.” This chapter establishes procedures for using mediation to prevent or resolve planning and zoning disputes.

§ 97-2. Declaration of policy.

It is the intent of the Town Board to provide a flexible framework within the Town of Rochester for the use of existing voluntary mediation programs, technical assistance and training as an optional means to enhance the quality of life for local citizens and achieve the cost-effective prevention or resolution of certain planning, zoning and land use disputes in the community.

§ 97-3. Definitions.

As used in this chapter, the following terms shall have the meaning indicated:

AUTHORIZED MUNICIPAL BOARD or BODY — The Planning Board, Zoning Board of Appeals or other entity empowered by the Town Board to review or act on local land use matters as defined therein.

MEDIATOR — An individual who has been certified as a mediator under the guidelines of the New York State Unified Court System Community Dispute Center Program or a person who has served as a mediator in two or more separate instances of municipal planning, zoning and land use dispute resolution or prevention.

PARTY OF INTEREST — Individuals or agents identified by the mediator as having a substantive concern or role in the outcome of a given planning, zoning and land use matter under the jurisdiction of the Town of Rochester; provided, further, that any such body or board of the Town of Rochester shall not be deemed to be a party of interest for the purposes of this chapter.

VOLUNTARY MEDIATION — A proceeding, initiated by an authorized board or body of the Town of Rochester, in which parties of interest to a dispute or potential dispute pertaining to municipal land use matters, including but not limited to comprehensive plans or plan updates, rezonings, subdivision plats, site plans, special use permits or appeals to the Zoning Board of Appeals, may, at their discretion and with the assistance of an impartial mediator, jointly seek to prevent or resolve differences and reach agreement.

§ 97-4. Authorization.

- A. The Town Board hereby enacts this chapter to enable authorized boards or bodies of the Town of Rochester having specific jurisdiction over certain planning, zoning and land use matters to refer a dispute or potential dispute to voluntary mediation as defined herein.
- B. The commencement of any such mediation proceeding shall be at the discretion of the authorized municipal board or body having jurisdiction in the dispute or potential dispute. Additionally, said municipal board or body is further empowered to supply findings of fact, either in person or in writing, as may be requested by a mediator pursuant to § 97-6 of this chapter.
- C. The authorized municipal board or body may initiate mediation at any point in the fulfillment of its planning, zoning or land use review responsibilities; provided, further, that such mediation proceeding and outcome shall complement, but not replace, otherwise applicable practices, procedures or enforcements, whether required by state law, local law or ordinance.

§ 97-5. Accepted practices.

Any voluntary mediation undertaken pursuant to the provisions of this chapter shall be conducted in accordance with accepted mediation practices, including but not limited to those developed for use by the New York State Unified Court System Community Dispute Center Program.

§ 97-6. Procedures.

- A. In the event that voluntary mediation is commenced pursuant to this chapter, the authorized municipal board or body having jurisdiction may, at its discretion, refer the matter in dispute or potential dispute to a mediator as provided herein. Any such referral shall be accompanied by a finding of fact from said authorized board or body which identifies the known issues and parties of interest in the matter.
- B. Participation by the parties of interest in a mediation proceeding commenced pursuant to this chapter shall be at their own discretion.

- C. The suspension of relevant time limits for municipal review as may be required by applicable planning, zoning and land use provisions of the Town of Rochester shall be at the discretion of and on such terms as the authorized municipal board or body and the parties of interest mutually agree. Such suspension shall not exceed 120 days from the date the matter is referred for mediation by the authorized municipal board or body having jurisdiction.
- D. The mediator shall report the results of mediation efforts undertaken pursuant to the provisions of this chapter within five business days after the proceeding has been concluded. Such report shall include, but not be limited to, the following:
 - (1) The names of the mediation participants, including any landowner or other person seeking land use approval, and any other persons or groups included in mediation sessions.
 - (2) A written copy of any agreements reached during the course of mediation, including identification of actions required to implement the agreements.
 - (3) An accounting of issues which would be resolved by the agreement and any issues remaining unresolved, including the identification of mediation participants associated with the respected issues.
- E. Before any mediated agreement can be executed, such agreement shall be prepared in writing and signed by the parties of interest and the mediator.

§ 97-7. Confidentiality.

For the purposes of complying with § 108 of the New York State Public Officers Law, the proceedings of voluntary mediation commenced pursuant to this chapter shall remain confidential.

§ 97-8. Voluntary mediation costs.

All costs associated with voluntary mediation conducted pursuant to the provisions of this chapter shall be allocated among the parties of interest in a manner to be determined by the mutual agreement of such parties. The Town Board may, at its discretion, enter into an agreement for sharing the costs of such mediation.

§ 97-9. Effects and limitations.

- A. Any mediation proceeding or outcome initiated pursuant to the provisions of this chapter shall complement, but not replace, otherwise applicable practices, procedures or enforcements, whether required by state law, local law or ordinance.
- B. The outcome of a mediation proceeding undertaken pursuant to this chapter shall not be deemed to bind or otherwise limit the discretion of the authorized municipal board or body having jurisdiction in the matter being mediated.

- C. An agreement that requires additional action by the authorized municipal board or body shall not be deemed to be self-executing. If any such additional action by the authorized municipal board or body is required, the landowner or his or her agent shall be responsible for initiating a request for such action and supplying any information required by said municipal board or body to undertake the action; provided, further, that the action undertaken by such municipal board or body shall not be bound or limited by the mediation agreement as provided in Subsection B of this section.
- D. Notwithstanding any restriction that would otherwise prevent reconsideration of an action of the authorized municipal board or body having jurisdiction, such municipal board or body may reconsider its decision on a land use matter in accordance with a mediation agreement developed pursuant to this chapter, provided that such reconsideration does not violate any substantive review process or requirement.

§ 97-10. Legislative authority; supersession of Town Law.

This chapter is hereby adopted pursuant to the provisions of § 10 of the New York State Municipal Home Rule Law and § 10 of the New York State Statute of Local Governments. It is the intent of the Town Board to supersede and amend any inconsistent provision of any other laws, ordinances, rules or regulations heretofore adopted by the Town of Rochester. Pursuant to § 10 of the New York State Municipal Home Rule Law, it is also the intent of the Town Board of the Town of Rochester to supersede the provisions of Article 16 of the Town Law.

§ 97-11. Severability.

If any provisions of this chapter are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the chapter shall remain in effect.

§ 97-12. When effective.

This chapter shall take effect upon filing with the Secretary of State.