

ORDINANCE NO. 2474

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72 (“HOUSING UNITS, MODERATELY PRICED; RENTAL UNITS, AFFORDABLY PRICED”), ARTICLE II (“AFFORDABLY PRICED RENTAL UNITS”)

WHEREAS, Sussex County Code (“County Code”) currently addresses the development of affordable rental housing for residents with low and moderate incomes under Chapter 72, Article II, of the County Code known as the “Sussex County Rental Program;” and

WHEREAS, no affordable rental housing has been developed under the provisions of the current Sussex County Rental Program; and

WHEREAS, Sussex County Council views the development of affordable rental housing as an important housing issue affecting the welfare of the citizens of Sussex County; and

WHEREAS, Sussex County Council believes that the current County Code provisions regarding the Sussex County Rental Program do not sufficiently address its concerns regarding the development of affordable rental housing in Sussex County; and

WHEREAS, Sussex County has held discussions with stakeholders involved in providing rental housing in Sussex County and the results of those discussions have been presented to Sussex County Council; and

WHEREAS, Sussex County Council wishes to encourage the development of affordable rental housing by implementing suggestions obtained from the discussion with stakeholders as encapsulated within this legislation; and

WHEREAS, Sussex County Council believes that these amendments to the Sussex County Rental Program will promote the public health, safety and welfare of its citizens.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Sussex County Code, Chapter 72, Article II, Section 72-16 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-16. Intent.

This chapter seeks to better protect the health, safety and welfare of Sussex County’s residents and workforce by stimulating the provision of affordable rental housing for residents with low and moderate incomes and is hereafter known as the Sussex County Rental Program or “SCR” or “program”.

Section 2. Sussex County Code, Chapter 72, Article II, Section 72-17 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-17. Governmental findings.

The Sussex County Council hereby finds that a shortage exists within the County for housing for residents with low and moderate incomes. Specifically, the Council finds that:

A. It is well known that Sussex County rents have inflated far beyond the ability of an average wage earner to pay. It is also known that federal rental assistance programs, such as the state-administered Public Housing and Section 8 Housing Choice Voucher Programs, are unable to completely satisfy the need for affordable rental housing. [The waiting list for Kent and Sussex Counties for affordable rental housing programs exceeds 5,000 residents, and the average waiting time for placement in one of these rental units is 18 months.]

[B. The Delaware Housing Coalition reports that the housing affordability wage for Delaware is now \$16.61 per hour. This is the hourly wage that a family must earn to afford to pay rent. In addition, the same study concluded that there are 13,422 extremely poor rental households throughout the state due to the lack of affordability of units, or lack of income.

C. The Delaware Statewide Housing Needs Assessment for 2008-2012 reports that there were 13,661 cash-paying renters in Sussex County in 2005, with a corresponding median gross monthly rent of \$671. Forty percent of those 13,661 renters were paying more than \$750 per month on rent. Also included in the assessment is an analysis of cost-burdened renter households, indicating a increase of 5.4% from 2000, with the majority of those households making less than \$20,000 annually. The assessment defines “at-risk renter households” as those “existing extremely low-income renter households with annual incomes of less than \$20,000 who are paying more than 30% of household income for housing costs. Many, but not all, of the at-risk households are housed in a substandard unit.” In Sussex County alone there are 3,621 at-risk renter households making below \$20,000.

D. Based on the most recent Department of Labor data, the fastest growing jobs are in the lowest paying sector, the service industry. It is necessary that the County help provide affordable rental housing for residents employed in this industry, as well as using affordable housing to attract residents to the more lucrative jobs of the professional sector.]

B.[E.] Council finds that new development is not adequately addressing the rental housing needs of the County's low- and moderate-income residents and workforce. Without influencing this trend, local employers will have a difficult time maintaining an ample workforce.

C.[F.] Without an adequate supply of affordable rental housing in close proximity to employment and Town Centers, the County's workforce must commute a great distance for work. Not only do long commutes have a negative[affect] effect on the environment and transportation, but commuting also comes with high fuel expenses.

[G. Projections suggest that the high level of demand for higher priced housing will continue, driven by macro-population factors, low County taxes and the proximity of the resort areas in eastern Sussex, discouraging developers from offering a more diverse range of housing in areas where the demand for higher priced housing is strong. The production of affordable rental housing is further deterred by the high cost of materials and labor.]

D.[H.] Given the proper incentives, the private sector possesses the necessary resources and expertise to provide the type of affordable rental housing needed in Sussex County.

Section 3. Sussex County Code, Chapter 72, Article II, Section 72-18 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-18. Declaration of public policy.

The Sussex County Council hereby declares it to be the public policy of the County to:

A. Encourage the creation of a full range of housing choices, conveniently located in suitable living environments, for all incomes, ages and family sizes.

B. Encourage the production of affordable rental units to meet the existing and anticipated future employment needs in the County.

C. Assure that affordable rental units are dispersed throughout the County consistent with the Comprehensive Plan.

D. Encourage developments in [Town Centers, Developing Areas, Environmentally Sensitive Developing Areas, and land that lies in a town's growth and future annexation area] Growth Areas as defined within the County's most current comprehensive plan and Areas of Opportunity as defined by the Delaware State Housing Authority [with 25 or more total dwelling units] to include a minimum percentage [number] of affordable rental units on public water and sewer systems.

E. Provide incentives for developers to construct affordable rental units through tools such as the density incentive and expedited review (defined below).

Section 4. Sussex County Code, Chapter 72, Article II, Section 72-19 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-19. Definitions

The following words and phrases have the following meanings:

APPLICANT

Any person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities owning or controlling via contract qualifying land (defined below) and any transferee or successor in interest of all or part of the qualifying land pursuing the development of affordable rental housing under the SCRCP that:

A. Submits to the County for approval or extension of approval a plan of housing development for any type of site plan review, subdivision plan or development approval (hereinafter, a “site plan”) that provides for the development of [at least 25 dwelling] affordable rental units on qualifying land in one or more subdivisions, parts of subdivisions, resubdivisions, or [stages]phases of development under the terms and conditions as set forth in this Article. [that includes a specified minimum number of affordable rental units.]

B. With respect to land in zones not subject to subdivision approval or site plan review, applies for building permits for the construction of [25 or more dwelling units]affordable rental units on qualifying land under the terms and conditions as set forth in this Article.

AREA MEDIAN INCOME

The midpoint family income for [a nonmetropolitan county] Sussex County, calculated each year by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size.

AT ONE LOCATION

All land of the applicant if:

- A. The property lines are contiguous; [and/] or
- B. The property lines are separated only by a public or private right-of-way at any point; [and/] or

C. The property lines are separated only by other land of the applicant and not subject to this section at the time of the submission of an application or development plan by the applicant.

CERTIFICATE OF ELIGIBILITY

A certificate valid for a period of time, which is issued to eligible tenants by the [Department (defined below)] landlord (defined below) and supplied to the Department (defined below) as further set forth within this Article. [to eligible tenants that places them on an eligibility list for SCRP units maintained by the Department.] This certificate must be issued before a tenant will be permitted to sign a lease agreement.

CONTROL PERIOD

The time a SCRP unit is subject to rental controls and occupancy requirements. The control period is 30 years and begins on the date of the lease (defined below).

DATE OF LEASE

The date of the initial lease agreement signing of an approved eligible tenant for a SCRP unit.

DENSITY INCENTIVE

Any increase pursuant to §72-21 that allows a residential development to achieve a density greater than would have been possible under the applicable provisions of the current and future zoning ordinances and the County subdivision regulations then in effect.

DEPARTMENT

The Sussex County Department of Community Development and Housing or its successors.

DEPARTMENT-DESIGNATED ENTITY (DDE)

Any agency, authority or political subdivision of the State of Delaware or any other public housing development agency or nonprofit housing corporation, land trust or similar entity designated by the Department and approved by the County Administrator.

DIRECTOR

The head of the Department of Community Development and Housing or head of a DDE, as applicable.

DWELLING [UNIT]

[A building or part of a building that provides a complete living facility for one family, including, at a minimum, facilities for cooking, sanitation, bathing and sleeping.] Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence; and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. "Dwelling" shall not include hotels, motels, motor lodges, boarding and lodging houses, tourist houses, or similar structures.

ELIGIBLE INCOME

The levels of income designated by the County Administrator which prohibit or severely limit the financial ability of persons to rent a dwelling unit in Sussex County. Eligible income is low- to moderate-income, defined as 30% to 80% of the area median income for Sussex County adjusted for household size as defined by the U.S. Department of Housing and Urban Development (HUD). Income includes gross salary, wages, dividends, interest and all other sources recognized by HUD from the eligible tenant and all other adults (age 18 and older) who will occupy the SCRP unit. Income will be verified by a copy of the filed income tax returns from the previous year and any other personal and financial information requested by the [Department] landlord in order to accurately verify the [applicant's]potential tenant's qualifications and income[including, but] which may include but is not limited to, a credit history report and a criminal background report on the proposed adult tenants, so long as these are requirements for all leases in the housing development.

A. Assets include all liquid (cash or investment) assets and real estate. Assets exclude dedicated college accounts, retirement funds, or the value of personal property (i.e., vehicles). Such assets may not exceed \$25,000.

ELIGIBLE TENANT

Person(s):

- A. Whose household is of low or moderate income;
 - B. Who has been found eligible to participate in the Sussex County Rental Program;
- and
- C. Who holds a valid certificate of eligibility from [the Department]the landlord.

EXPEDITED REVIEW

A project entering the SCRP will receive priority in the County's planning and zoning process, with the Director of Planning and Zoning and the County Administrator to determine the applicant's placement in the list of pending applications. The expedited review is provided to the applicant to assist the applicant in managing, to the extent possible, the risk of changes to cost, interest rates, schedule and other factors that the applicant is taking on by virtue of participation in the SCRP. If an applicant at any time during processing elects to withdraw from the SCRP, any approvals granted for the development through the date of withdrawal will be vacated and the applicant will have to resubmit the project through the normal County process. A project receiving expedited review does not exempt the project from the County's planning and zoning process, nor guarantee approval through that process.

FORECLOSURE EVENT

A foreclosure, deed-in-lieu of foreclosure or other court-ordered sale of the rental unit or of the subdivision or development in which the unit is located, subject to rental restrictions continuing in force after foreclosure sale of disposition.

LANDLORD

The owner of the property that contains SCRP units or an entity designated by the owner to manage and lease dwelling units.

[MINIMUM STANDARD OF ELIGIBILITY

The criteria required to obtain a certificate of eligibility as enumerated in § 73-23 below.]

QUALIFYING LAND

All land that:

A. Is owned by or under contract to the applicant; and

B. Is located within a [town center, developing area or Environmentally Sensitive Developing Area and zoned for any type of residential development to which a density provision applies; or land that is designated on a town's comprehensive plan as lying within the town's growth and future annexation area] Growth Area as defined within the County's most current comprehensive plan or within an Area of Opportunity as defined by the Delaware State Housing Authority; and

C. Requires the submission and approval of a site plan or, where a site plan is not required, one or more building permits; and

D. Is served by a public water and sewer system; and

E. Is at one location as defined above.

SUSSEX COUNTY RENTAL PROGRAM UNIT (SCRIP UNIT)

A dwelling [unit] which is:

A. Offered for lease to eligible tenants through or pursuant to the provisions of this Article and any regulations promulgated thereunder by the Department and approved by the County Administrator; or

B. Leased under another government program designated by the County Administrator designed to assist in the construction or occupancy of affordable rental housing.

Section 5. Sussex County Code, Chapter 72, Article II, Section 72-20 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-20. Minimum standards of eligibility for [eligible] tenants.

A. Eligible tenants must:

(1) Have proof of citizenship.

(2) Be of eligible income, as defined in § 72 19 above, and be able to pay the first month's rent and any required security deposit.

(3) Be employed and live in Sussex County for at least one year preceding application to the SCRIP. Sussex County employers may seek waivers to this restriction from the Director and County Administrator. Waivers are evaluated on a case-by-case basis and are not guaranteed.

(4) Provide proof that adult tenants have not been convicted of a felony and have a satisfactory credit and criminal history, so long as these are requirements of all leases within the proposed housing development.

(5) Occupy the SCRIP unit as the tenant's principal residence during the lease period. Each eligible tenant must certify before taking occupancy that the tenant will occupy the SCRIP unit as the tenant's principal residence. Any tenant who violates occupancy requirements will be subject to eviction procedures.

B. Where necessary or advisable to achieve the objectives of this chapter or to comply with state or federal housing laws, the Department may propose changes to these standards for approval by the County [Administrator], including changes to eligibility requirements for tenants as recommended by the Department.

Section 6. Sussex County Code, Chapter 72, Article II, Section 72-21. There are no amendments to this section, but it is repeated in this ordinance in order to provide information to the reader about what otherwise would seem to be a missing section of the SCRP ordinance for review.

§ 72-21. Density and expedited review incentives.

A. **Density incentive.** Subject to meeting the requirements outlined in § 72-22, a proposed development on qualifying land at one location may receive a density bonus of 20%. The project entering the SCRP with the execution of a SCRP agreement will be allowed to utilize the density permitted by the zoning district in which the property is located, provided that the total density, including any SCRP density bonus, shall not exceed 12 units per acre.

B. **Expedited review.** A project entering the SCRP through execution of an SCRP agreement will receive expedited review, as defined in § 72-19 above, through the County's Planning and Zoning process.

C. **Incentives will only be granted to projects submitted for new development that meet all requirements of this program.**

D. **To the extent necessary, Council shall amend the provisions of the County's Zoning Ordinances as needed to achieve the density incentives and the specific design elements (e.g., minimum lot sizes, setbacks, building heights, parking requirements, etc.) of approved SCRP projects.**

Section 7. Sussex County Code, Chapter 72, Article II, Section 72-22 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-22. Minimum standards of eligibility for SCRP developments.

A. Applicants [with proposals of 25 to 64 total units] must contribute [40%]12.5% of all units to SCRP inventory[. Applicants with 65 or more units must contribute 15% of all units to SCRP inventory with a minimum of 26 SCRP units]. In applying and calculating the number of [moderately priced]affordable units within a proposed development, any decimal fraction less than or equal to 0.50 may be disregarded and any decimal fraction greater than 0.50 shall be constructed as one unit. In the case where the total number of units being constructed is four (4) or less, the minimum number of SCRP units must be one (1) unit.

B. All parcels in the proposed project must be on qualifying land, as defined in § 72 19.

C. All units contributed as SCRCP units will remain at the affordable rental rates specified herein for the remainder of the control period. SCRCP units shall never be leased as market-rate units during the control period, regardless of vacancy[.] except in accordance with § 72-23.N(1).

D. SCRCP units must be fully integrated into the communities of which they are a part and shall not be substantially different in external appearance from market-rate units. SCRCP units shall be equipped with the same basic appliances as the market rate units, such as an oven, refrigerator, dishwasher, and washer and dryer[, as market rate units are equipped with].

Section 8. Sussex County Code, Chapter 72, Article II, Section 72-23 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-23. SCRCP agreements.

To participate in the SCRCP and secure any incentives provided for herein, an applicant must execute an SCRCP agreement prepared by the Department and the County Attorney. Each agreement must include, at a minimum, the following information and/or evidence the following agreements and any others deemed necessary by the Department and the County Attorney to properly implement the chapter:

A. The specific number of SCRCP units to be constructed in the project. If a final site plan has not been approved when the SCRCP agreement is executed, an amendment to the SCRCP agreement will be made to incorporate the approved final site plan.

B. The schedule pursuant to which the SCRCP units will be constructed, marketed, and delivered and explaining the relationship between the delivery of market-rate units and the delivery of SCRCP units (i.e., a stated number of SCRCP units to be created for each market-rate unit created).

1) Applicants should affirmatively market the SCRCP units to diverse populations, and meet with the surrounding residents early in the development approval process.

C. Any economic risk created by changes, whether within or outside of the applicant's control, in development and construction costs, interest rates, processing and construction schedules, permitting and any other factor impacting the applicant's costs and development obligations are borne solely by the applicant.

D. Building permits, performance bonds and letters of credit.

(1) No building permits shall be issued in any subdivision or housing development where SCRIP units are included until the applicant executes a valid SCRIP agreement which applies to the entire subdivision.

(2) If an applicant does not build the SCRIP units in accordance with the construction schedule along with or before other dwelling units the County Administrator may withhold building permits[,] or call in any performance bond [and] or letter[s] of credit from the applicant until the SCRIP units contained in the construction schedule are built and contributed to SCRIP rental inventory to the satisfaction of the Department.

E. Be signed by the applicant and all other parties having an interest in the property whose signatures are required for the effective and binding execution of contracts conveying real property. SCRIP agreements must be executed in a manner that will enable them to be recorded in the land records of the County. If the applicant is a corporation or limited liability company, the principal officers of the entity must sign the agreements individually and on behalf of the corporation pursuant to a duly adopted resolution.

F. Partnerships, associations, corporations and other entities may not evade the requirements of the SCRIP agreement through voluntary dissolution, bankruptcy, or the sale or transfer of qualifying land.

G. The SCRIP agreement may only be assigned with the prior written approval of the Department and only if the proposed assignee demonstrates the financial ability to fulfill all of the applicant's obligations under the SCRIP agreement.

H. [Applicants] Landlords are responsible for marketing, [and] leasing, and determining tenant eligibility for the SCRIP units. [The Department will screen eligible tenants and issue a certificate of eligibility. Upon availability of a vacant SCRIP unit, the eligible tenant will be sent to the landlord to sign the lease agreement.] A lease agreement shall not be signed unless validated by a certificate of eligibility. A landlord shall not be permitted to refuse to rent a unit to an eligible tenant without providing the Department with just cause, to the Department's satisfaction, for the refusal.

I. If the applicant is not also the builder, the relationship between the applicant and the builder shall be fully disclosed to the Department's satisfaction, as soon as the relationship is established.

J. SCRIP units must be fully integrated into the communities of which they are a part (not separated geographically from the market rate units and not grouped together) and shall not be substantially different in external appearance from non-SCRIP units. When the SCRIP units are a part of a phased development, a proportionate number or percentage of said units will be placed within each phase and/or constructed within each housing type appearing in the development. The planning and design of individual SCRIP units must be consistent with the planning and design of market-rate units within a single project.

(1) The ratio of SCRIP units by type must reflect the ratio by type of market rate units, to the extent feasible. For instance, if a development has 200 two-bedroom dwelling units and 100 one-bedroom dwelling units, the ratio of two-bedroom to one-bedroom SCRIP units should also be 2:1.

K. The applicant will execute and record covenants confirming that:

(1) The covenants will bind the applicant, any assignee, mortgagee, or buyer and all other parties that receive title to the property. In the event the mortgagee acquires the property through a foreclosure or acceptance of deed-in-lieu of foreclosure, the SCRIP agreement covenants will continue in effect. The covenants must be senior to all instruments securing financing.

(2) In any deed or instrument conveying title by the applicant, the property shall remain subject to all of the terms and conditions contained in the SCRIP agreements by the applicant required under the chapter during the control period. The source of the SCRIP agreements and any deed restrictions related thereto must be included in the public land records so that they are readily identifiable in a routine title search.

L. Where the applicant is a DDE, agreements will be negotiated between the Department and the DDE so as to be consistent with the mission, strategies, business plans and operating procedures of the DDE and may, with Council approval, deviate from the requirements of this chapter.

M. The SCRIP agreement requires that the landlord ensure that the SCRIP units are occupied only by tenants whose monthly income levels do not exceed the eligible income limit, and shall prohibit tenants from subletting or subleasing the units. The agreement shall also require the landlord to submit a copy of the initial and all renewal leases to the Director within 30 days of signing the lease. In addition, the landlord must supply the information listed below in a format acceptable to the Director on an annual basis:

(1) the number of SCRP units, by bedroom count, that are leased to eligible tenants and those that are vacant, and the monthly rent charged for each SCRP unit;

(2) for each SCRP unit, the tenant's name, household size, and total household income as of the date of the lease, and the effective date of the lease;

(3) a statement that to the best of the landlord's information and knowledge, that tenants who are leasing the SCRP units meet the eligibility criteria; and

(4) a copy of each new or revised certificate of eligibility obtained since the last annual report.

[an annual report to the Director, which includes, but is not limited to, a listing of all affordable rental units within the project; the monthly rents charged; vacancy information for the prior year; and the household size and monthly income for tenants of each affordable unit throughout the prior year.] The Department shall audit the report and may require such additional information needed to evaluate and accept the annual report.

N. The tenant must vacate the SCRP unit if the tenant's household income exceeds 80% of the area median income by 20%. The applicant must take the necessary action to have the tenant vacate the SCRP unit within six months of receiving information that the tenant's household income exceeds the eligible income limit.

(1) Notwithstanding the provisions of § 72-23.N above, if the applicant immediately designates an additional comparable unit as an affordable dwelling unit to be leased under the controlled rental price and requirements of the SCRP program, the tenant of such SCRP unit referenced in § 72-23.N above may continue to lease such unit at the market value rent.

Section 9. Sussex County Code, Chapter 72, Article II, Section 72-24 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-24. SCRP units.

A. Rent.

(1) Rent shall be established and updated annually by the Department based upon 25% of Household income for 50% of the Area Median Income adjusted for Household size and unit size and shall not include trash services, parking, water and sewer utilities and any other charges to be paid by the tenant.

[(1) The SCRCP unit rental price shall be determined on a case-by-case basis for each eligible tenant.]

(2) The eligible tenant must provide to the landlord income tax returns (and proof of payment of any taxes owed) from the previous year for all members of the household who were required to file such returns. If an eligible tenant was not required to file tax returns or if the landlord believes that information from the previous tax returns is insufficient to determine income, the landlord [Department] is authorized to request such information as it deems necessary to confirm the income levels of the proposed tenants.

[(3) The SCRCP unit rental rate shall be 25% of the total gross monthly income of the household. The rental rate shall include trash services, parking, water and sewer utilities and any other charges to be paid by the tenant.]

B. Unit and household size. Households must [will] be placed in units according to the following distribution:

Unit Size (number of bedrooms)	Household Size
Efficiency	1 [to 2]
1	1 to 2
<u>1 + Den</u>	<u>2 to 4</u>
2	2 to 4
<u>2 + Den</u>	<u>2 to 4</u>
3	4 to 6
4	5 to 8

Section 10. Sussex County Code, Chapter 72, Article II, Section 72-25 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-25. Leasing of SCRCP units.

A. Leases to eligible tenants.

(1) Every SCRCP unit constructed under this program must be offered to all eligible tenants for lease as the eligible tenant's principal residence. Notification to the public of SCRCP unit availability will be made by the landlord and is recommended to be made by advertising on DelawareHousingSearch.org. [through the Department's website and notices in area publications.] The Department may, but is not obligated to, provide notice of SCRCP unit availability through the Department's website.

(2) The landlord [Department will screen initial applications for SCRP units from the public to] will determine SCRP tenant eligibility under § 72-20 and [using program guidelines and maintaining a waiting list of eligible tenants. The landlord will communicate with the Department when a SCRP unit is available for lease. L] lease agreements shall not be signed until the tenant has received a certificate of eligibility from the landlord. [Department.]

(3) Annually, the Department will [submit] provide updated income guidelines and rental rates [rent formulas] to the landlord for use in leasing the SCRP units. [establishing rental rates that comply with SCRP requirements.]

(4) Lease agreements shall contain the same terms and conditions as the lease agreements with market-rate renters with the exception of the rental rates and other terms and conditions as required under this Article.

(5) All lease agreements of SCRP units shall cover a period of one year.

(6) An eligible tenant already occupying a SCRP unit has first-option to renew the lease agreement each year, as long as the tenant maintains good standing with the landlord and continues to qualify as an eligible tenant. The Department shall be notified by the landlord of the intent to evict and the reasons therefor at the same time the landlord first provides notice to the tenant.

B. Tenants of SCRP units shall provide an executed affidavit on an annual basis certifying their continuing occupancy of the unit as their principal residence. Tenants shall provide such affidavit to the landlord by the date that may be specified in their lease or that may otherwise be specified by the landlord.

C. In the event the tenant of an SCRP unit fails to provide his or her landlord with an executed affidavit as provided for in the preceding paragraph within thirty (30) days of written request for such affidavit, then the lease shall automatically terminate, become null and void and the occupant shall vacate the unit within thirty (30) days of written notice from the landlord.

Section 11. Sussex County Code, Chapter 72, Article II, Section 72-26. There are no amendments to this section, but it is repeated in this ordinance in order to provide information to the reader about what otherwise would seem to be a missing section of the SCRP ordinance for review.

§ 72-26. Foreclosure or default.

A. The landlord must provide the Department with a copy of any mortgage default notification immediately upon receipt and a written explanation of how the default will be remedied.

B. If a foreclosure event occurs during the control period, the covenants endure through the transfer of property until the end of the control period.

C. If the foreclosure event occurs after the thirty-year control period, then all binding restrictions of this chapter will dissolve.

Section 12. Sussex County Code, Chapter 72, Article II, Section 72-27 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-27. [Phased i]Implementation.

A. [In order to provide a means to determine whether the rental housing program is achieving its desired objectives and an opportunity to test the effectiveness of this article, there shall be a test period of 36 months.] Improvements to concepts, processes and rules and regulations of the SCRIP program [identified during the test period] will be incorporated into future amendments of [the article] this Article. Council views this [a]Article as a living document that will be modified as needed to respond to economic, housing, development, land use and other trends in the County and to best practices in affordable rental programs. [The article will not be fully implemented until the test period is completed and the article hereafter amended to include any additional provisions Council determines are needed prior to the expiration of the test period.

B. This section further establishes a request for proposal (RFP) process to select program participants. The RFP process will:

(1) Allow the County to manage the number of potential development projects participating in the program until program guidelines related to administration, land use, zoning and public processing are tested and finalized.

(2) Allow the County to manage the number of potential SCRIP units created until the actual market for SCRIP units is better understood and quantified and until program guidelines related to marketing and leasing are tested and finalized.

(3) Allow applicants to present alternative approaches to housing types, density incentives, good community design, and other program features to encourage better overall land use, creation of SCRP units in high land cost areas or similar potentially desirable outcomes. Alternative approaches deemed successful by the Council will be incorporated into future amendments to the chapter.

(4) Ensure that the letter of the chapter produces results that are consistent with the spirit of the chapter by allowing Council to amend the chapter as needed based on actual experience prior to final promulgation and full adoption.]

Section 13. Sussex County Code, Chapter 72, Article II, Section 72-28 shall be amended by the addition of the underlined language and deletion of the bracketed language as follows:

§ 72-28. Government regulations; enforcement.

A. The Department [must] will maintain a list of all SCRP units constructed and leased under this program, and the Council hereby authorizes the County Administrator to promulgate and adopt regulations and approve the various agreements/documents necessary to administer this program.

B. The Director may, with Council approval, waive or modify the provisions of the [SCRP] program if the Director finds the program in conflict with state or federal housing laws.

C. This program applies to all agents, successors, and assigns of an applicant. A building permit shall not be issued and a preliminary plan of subdivision, development plan, or site plan shall not be approved for a development that will contain affordable rental units to be submitted to [SCRP] this program unless it meets the requirements of this program. The County Administrator may deny, suspend, or revoke any building or occupancy permit upon finding a violation of this program. Any prior approval of a preliminary or final plan of subdivision, development plan or site plan may be suspended or revoked upon the failure to meet any requirement of this chapter. An occupancy permit shall not be issued for any building to any applicant, or a successor, or assign of any applicant, for any construction that does not comply with this program. The County Administrator may also withhold or call in performance bond funds, letters of credit, and certificate s of compliance or occupancy from the applicant for any violation of this program.

D. The Director is authorized to pursue any available remedy, legal or equitable in nature, to enforce the requirements of this program or to prevent or abate a violation of this program.

E. The Director may take legal action to stop or cancel any lease of an SCRCP unit if any party does not comply with all requirements of this program. The Director may recover any funds improperly obtained from the rental of a SCRCP unit in violation of this chapter.

F. In the event of litigation to enforce the terms and conditions of this chapter or any agreement or obligation under the SCRCP program, [it]the Department shall be entitled to an award of legal costs and fees to be collected from the party who is determined to be in violation of such agreements and obligations.

Section 14. This Ordinance shall become effective upon its adoption by a majority of the elected members of Sussex County Council.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2474 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 1ST DAY OF NOVEMBER 2016.

**ROBIN A. GRIFFITH
CLERK OF THE COUNCIL**