

**ORDINANCE NO. 1821**

**AN ORDINANCE TO ADOPT CHAPTER 72 OF THE CODE OF SUSSEX COUNTY RELATING TO MODERATELY PRICED HOUSING UNITS.**

**WHEREAS, Council believes that the health, safety and welfare of the citizens of Sussex County will be better served by revising the Code of Sussex County to adopt an Ordinance that will promote the creation of housing units for moderate income citizens of the County; and**

**WHEREAS, Council believes that a housing shortage exists within the County with respect to housing for residents with moderate incomes; and**

**WHEREAS, Council believes that this Ordinance will address the housing shortage for residents with moderate incomes.**

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**§72-1 TITLE AND SCOPE**

**This Chapter shall be known as the Moderately Priced Housing Unit Program (the “MPHU Program” or the “Program”) and establishes mechanisms to stimulate the production and sale of housing for residents with moderate incomes.**

**§72-2 INTENT**

**This Chapter seeks to better protect the health, safety and welfare of Sussex County’s residents and workforce by stimulating the provision of housing for residents with moderate incomes.**

**§72-3 GOVERNMENTAL FINDINGS**

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

- A. The County is experiencing rapid population growth. From 1990 to 2000, the County’s population increased by 38.3% from 113,229 persons to 156,638 persons. Most of these new residents are classified as the “young elderly”, defined as people entering pre-retirement or early retirement that are financially well off.**
- B. This influx of affluent new households has created significant new demand for public utilities, health and human services, government services and retail and other commercial services, thereby increasing the need for persons of moderate income employed in the stated capacities and for the housing to accommodate those employees.**
- C. In turn, the supply of moderately priced housing has decreased over the past 10 years as housing costs have escalated due to the influx of affluent households. The most recent real estate data suggests that households earning 80% to 125% of the area median income have very few choices for modern, modest quality housing except in the most western areas of the County and, even there, choices and supply are limited.**
- D. Based on the most recent Department of Labor data, a significant portion of the Sussex County workforce earns less than 125% of the area median income.**
- E. Based on this information, Council finds that new development is not adequately addressing the housing needs of the County’s moderate income residents and workforce. Continuation of this trend will have a negative**

effect upon the ability of local employers to maintain an adequate workforce.

- F. The inadequate supply of housing for the County's workforce is increasing the commuting distance to employment, to include commuting outside the County. This imbalance between jobs and housing has undesirable transportation and environmental consequences. Longer commuting overtaxes existing roads and transportation facilities and significantly contributes to air and noise pollution and traffic congestion. It also produces stress for affected employees and creates greater than normal personnel turnover in the private businesses and public agencies of the County. These circumstances adversely affect the health, safety and welfare of County residents.**
- 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 housing and the workers to support associated residents is strong. The production of moderately priced housing is further deterred by the high cost of materials and labor.**
- H. Housing industry experts advise that if land and development costs can be reduced, modern, quality houses can be built and sold at prices affordable to households of moderate income.**
- I. Given the proper incentives, the private sector possesses the necessary resources and expertise to provide the type of moderately priced housing needed in the County.**

#### **§72-4 DECLARATION OF PUBLIC POLICY.**

The Sussex County Council hereby declares it to be 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 moderately-priced housing to meet the existing and anticipated future employment needs in the County.**
- C. Assure that moderately-priced housing is dispersed throughout the County consistent with the Comprehensive Plan.**
- D. Encourage the production of moderately-priced housing by allowing increases in density to reduce land and development costs.**
- E. Encourage developments in Town Centers, Developing Areas and Environmentally Sensitive Developing Areas with 35 or more total dwelling units to include a minimum number of moderately-priced units of varying sizes on public water and sewer systems.**
- F. Provide incentives for private developers to construct moderately priced housing through tools such as the Density Incentive (defined below).**
- G. Allow qualified projects to fully utilize the density permitted by the zoning district in which the property is located.**
- H. Allow developers who are building qualified projects an expedited review period.**

## **§72-5 DEFINITIONS**

The following words and phrases have the following meaning:

**A. Applicant.** Any person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities owning or controlling via contract Qualified Land (defined below) and any transferee of all or part of the Qualified Land that, after this Chapter takes effect:

1. Submits to the County for approval or extension of approval a plan of housing development for any type of site review, subdivision plan or development approval (hereinafter, a “Development Plan”) that provides for the development of at least thirty-five (35) dwelling units on Qualifying Land in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development; or
2. With respect to land in zones not subject to subdivision approval or site plan review, applies for building permits for the construction of thirty-five (35) or more dwelling units on Qualifying Land.

**B. Approved Resale Price.** The resale MPHU sale price established by the Department pursuant to Section 72-11.A.

**C. At One Location.** All land of the applicant if:

1. The property lines are contiguous; and/or
2. The property lines are separated only by a public or private right-of-way at any point; and/or
3. The property lines are separated only by other land of the Applicant not subject to this Section at the time of the submission of a permit or Development Plan by the Applicant.

**D. Control Period.** The time a MPHU is subject to resale price controls and owner occupancy requirements. The Control Period is 20 years and begins on the Date of Sale for new or resale MPHU’s.

**E. Date of Sale.** The date of settlement for purchase of a new or resale MPHU.

**F. Density Incentive.** Any increase in density pursuant to Section 72-7.A that allows a residential development to achieve a density greater than would have been possible under the applicable provisions of current and future zoning ordinances and the County’s subdivision regulations.

**G. Department.** The Sussex County Department of Community Development & Housing unless a DDE is the Applicant or has provided any funding, in which case Department will refer to the DDE.

**H. 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 Council.

**I. Director.** The head of the Sussex County Department of Community Development & Housing or head of a DDE, as applicable.

**J. Dwelling Unit.** A building or part of a building that provides complete living facility for one family, including, at a minimum, facilities for cooking, sanitation and sleeping.

**K. Eligible Buyer.** Person(s) (1) whose household is of Moderate Income, (2) who has been found eligible to purchase an MPHU and (3) who holds a valid certificate of eligibility from the Department. Eligible Buyers of equal Moderate Income may qualify for different Maximum Sale Prices (defined below) based on the size of the Eligible Buyer's household.

**L. Excess Proceeds.**

1. For sale of a new MPHU in the open market without deed restrictions pursuant to Section 72-10.A.7, Excess Proceeds means ninety-five percent (95%) of the sale price to the open market buyer less Applicant's actual out-of-pocket closing costs as shown on the HUD-1 settlement sheet less the applicable Maximum Sales Price.
2. For sale of a resale MPHU in the open market without deed restrictions, Excess Proceeds means the resale price to the open market buyer less seller's actual out-of-pocket closing costs as shown on the HUD-1 settlement sheet less a market rate third party sales commission (if a broker is used) less the Approved Resale Price.
3. For sale of an MPHU as the result of a Foreclosure Event, Excess Proceeds means the accepted bid at the foreclosure sale less the Approved Resale Price, provided that the accepted bid exceeds the sum of the outstanding principal balance, interest, taxes, insurance, fees provided for in the mortgage and any foreclosure-related expenses including, but not limited to, expenses of marketing the property due to the first mortgagee and any other costs associated with the foreclosure sale payable to junior lien holders.

Seller is obligated to discharge any mortgages or other debt associated with the MPHU out of the Maximum Sales Price or Approved Resale Price.

**M. Foreclosure Event.** A foreclosure, deed-in-lieu of foreclosure or other court-ordered sale.

**N. Maximum Sale Price.** The new MPHU sale price established by the Department pursuant to Section 72-9.

**O. Minimum Standards of Eligibility.** The criteria required to obtain a certificate of eligibility as enumerated in Section 72-6 below.

**P. Moderate Income.** Those levels of income established by the County Council which prohibit or severely limit the financial ability of persons to buy housing in Sussex County. Initially, Moderate Income is established as 80-125% of Area Median Income adjusted for household size as defined by the U.S. Department of Housing and Urban Development (HUD). Income includes salary, wages, dividends, interest and all other sources recognized by HUD from the Eligible Buyer and all other adults who will occupy the MPHU. Further, for persons or households with significant assets that do not produce income, the Department will establish criteria for imputing income to such assets.

**Q. Moderately Priced Housing Unit (MPHU).** A dwelling unit which is:

1. Offered for sale and sold to Eligible Buyers through or pursuant to regulations promulgated by the Department and approved by the County Council; or
2. Sold under another government program designated by the County Council designed to assist in the construction or occupancy of moderately priced housing.

**R. Priority Marketing Period.** The period during which an MPHU must be offered for sale exclusively to an Eligible Buyer as established in Section 72-10.A.6.

**S. Qualifying Land. All land:**

- 1. Owned by or under contract to the Applicant; and**
- 2. In a Town Center, Developing Area or Environmentally Sensitive Developing Area and zoned for any type of residential development to which a density provision applies; and**
- 3. Requires the submission of a Development Plan or, where a Development Plan is not required, a building permit; and**
- 4. Is served by a public sewer and water system; and**
- 5. Is At One Location.**

**§72-6 MINIMUM STANDARDS OF ELIGIBILITY FOR ELIGIBLE BUYERS**

**Eligible Buyers must:**

- A. Be of Moderate Income as defined in 72-5.J and K above.**
- B. As of the date of application to purchase an MPHU, be a permanent resident of Sussex County.**
- C. For one year immediately preceding the date of application to purchase an MPHU, have been a permanent resident of Sussex County.**
- D. At of the date of application to purchase an MPHU, have been employed in Sussex County for at least the immediately preceding year and be currently employed in Sussex County as of the Date of Sale.**
- E. Maintain the MPHU as their primary residence throughout the period of participation in the MPHU Program, except as provided for in Section 72-12.D.**

Where necessary or advisable to achieve the objectives of this Ordinance or to comply with state or federal housing laws, the Department may propose changes to these standards for approval by the County Council.

**§72-7 DENSITY INCENTIVE AND OTHER INCENTIVES**

**A. Subject to meeting the requirements outlined in Sections 72-8, 72-9 and 72-10 of this Ordinance, a proposed development on Qualifying Land At One Location may achieve the following Density Incentives:**

	<u><b>Tier A</b></u>	<u><b>Tier B</b></u>	<u><b>Tier C</b></u>
<b>MPHU's Required</b>	<b>15%</b>	<b>15%</b>	<b>15%</b>
<b>Density Incentive</b>	<b>20%</b>	<b>25%</b>	<b>30%</b>

**Tier A: Greater than 100% and less than or equal to 125% of the Area Median Income as established by the U.S. Department of Housing and Urban Development, adjusted for family size and updated annually.**

**Tier B: Greater than 80% and less than or equal to 100% of Area Median Income as established by the U.S. Department of Housing and Urban Development, adjusted for family size and updated annually.**

**Tier C: Less than or equal to 80% of Area Median Income as established by the U.S. Department of Housing and Urban Development, adjusted for family size, and updated annually.**

For Applicants proposing a mix of Tiers, the Density Incentive will be the weighted average reflecting the number of units in each Tier. For example, if a project has one-third each of Tier A, Tier B and Tier C MPHU's, the weighted average Density Incentive will be 25%. If a project has 90% Tier A and 10% Tier C, the weighted average Density Incentive will be 21%.

In planned development zones and mixed use zones containing flexible development standards, the number of MPHU's will be 15% of the total number of dwelling units.

In either single family detached or townhouse subdivisions, each MPHU must have at least two bedrooms. One bedroom MPHU's are permitted in condominiums provided that the number of one bedroom condominium MPHU's is equal to or less than the number of market rate one bedroom units in the subdivision.

**B. Other incentives will include:**

- a. **Expedited Review.** A project entering the MPHU Program through execution of an MPHU Agreement will receive expedited review. The expedited review is provided to the Applicant to assist 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 MPHU Program. If Applicant, at any time during processing, elects to withdraw from the MPHU Program, any approvals granted for the development through the date of withdrawal will be vacated and the Applicant will have to resubmit the project in the normal County process.
- b. **Fee Waivers.** In consultation with the Department of Planning and Zoning and subject to Council approval, the Department may waive some or all County fees. Any such waivers will be stated in the MPHU Agreement.

**C. Council is authorized to modify the provisions of the County's Zoning Ordinance and the County's planning and zoning regulations and processes 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 MPHU projects.**

**§72-8 MPHU AGREEMENTS**

To participate in the MPHU Program and to secure a Density Incentive, an Applicant must execute an MPHU Agreement negotiated with 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 Ordinance:

- A. The specific number of MPHU's to be constructed in each price level meeting the Maximum Sale Prices established by the Department. An amendment to the MPHU Agreement will be made to incorporate approved Development Plans once the plans are available.
- B. The schedule pursuant to which the MPHU's will be constructed marketed and delivered and the relationship between the delivery of market rates units and the delivery of MPHU's (i.e., a stated number of MPHU's to be created for each non-MPHU created).
- 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 economics are borne solely by the Applicant.

**D. The County may withhold building permits until Applicant is, in the sole discretion of the Department, in full compliance with the MPHU Agreement.**

**E. Be signed by the Applicant, by other parties having an interest in the property and by all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. MPHU 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, the principal officers of the corporation must sign the agreements individually and on behalf of the corporation.**

**F. Partnerships, associations and corporations may not evade the requirements of the MPHU Agreement through voluntary dissolution.**

**G. The MPHU Agreement may only be assigned with the written approval of the Department and only if the proposed assignee agrees to fulfill and demonstrates the financial ability to fulfill the Applicant's obligations under the MPHU Agreement.**

**H. Applicants are responsible for marketing and selling the MPHU's. During Priority Marketing Periods, Applicant will work with the Department to screen Eligible Buyers and to receive any specific selection criteria or directions promulgated by the Department.**

**I. If the Applicant is not also the builder, disclosure of the relationship between Applicant and builder as soon as the relationship is established. Further, acknowledgement by Applicant and builder that any deed transferring lots to builder will be encumbered by covenants described in 72-8.K below.**

**J. MPHU's must be fully integrated into the communities of which they are a part. The planning and design of individual MPHU's must be consistent with the planning and design of market rate units within a single project.**

**K. Applicant will execute and record covenants confirming that:**

- 1. The restrictions of this Ordinance run with the land; and**
- 2. The covenants will bind the applicant, any assignee, mortgagee, or buyer and all other parties that receive title to the property with the exception of the first lien mortgage holder. In the event the first lien mortgagee acquires the property through a foreclosure or acceptance of deed-in-lieu of foreclosure, the resale restrictions will be extinguished. The covenants must be senior to all instruments securing financing with the exception of the first lien mortgagee.**
- 3. In any later deed or instrument conveying title to an MPHU, the property remains subject to the restrictions contained in the covenants required under the Ordinance during the Control Period until the restrictions are released. The source of the deed restrictions must be included in the public land records so that they are readily identifiable in a routine search.**

**L. Where Applicant is a DDE, covenants 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 Ordinance.**

#### **§72-9 MAXIMUM SALE PRICES OF NEW MPHU's**

**A. The Department will establish the Maximum Sale Price for each tier of Moderate Income and for each household size within each tier. The Maximum Sale Price applies to new MPHU's. The Maximum Sale Price for any level of Moderate Income and household size is established by:**

1. Calculating the maximum conventional, 30 year amortizing first mortgage supportable by the Council-approved Moderate Income levels based on prevailing interest rates, amortization schedules and allowable debt burdens provided by mortgage lenders approved by the Department to make loans to Eligible Buyers; then
2. Deducting from the calculated maximum first mortgage the good faith estimate of a typical Eligible Buyer's out-of-pocket closing costs as shown on a HUD-1 settlement sheet to purchase the MPHU; and finally
3. Multiplying the result by 0.95, or such other factor promulgated by the Department and approved by County Council from time to time, to provide a minimum financial cushion for Eligible Buyers for routine maintenance, emergencies and other unplanned financial circumstances.

B. The Department will establish new Maximum Sale Prices whenever there are, in the Department's sole opinion, material changes in Moderate Income as defined and/or in market terms for interest rates, amortization schedules and debt burdens.

C. Maximum Sales Prices are solely income and mortgage-related and are not tied to the Applicant's actual cost of producing and selling MPHU's, or, in the case of resales, sale price expectations based on the Sussex County real estate market. Applicants must carefully consider the risks associated with fluctuations in both Maximum Sales Prices and in the cost of producing MPHU's prior to participating in the MPHU Program. Once an Applicant enters the Program, all such risks are borne solely by the Applicant and Applicant will have no cause to seek relief from the Department or the County.

#### **§72-10 INITIAL SALE OF NEW MPHU'S**

##### **A. Sale to Eligible Buyers**

1. Every MPHU constructed under this Program must be offered to all Eligible Buyers for purchase as the Eligible Buyer's principal residence. Notification of MPHU availability will be made through legal notices in area publications meeting public notice criteria. At the time the Department accepts an application from an Eligible Buyer, it will secure written confirmation from such person that Eligible Buyers are solely responsible for monitoring legal notices for the availability of MPHU's and for information on the MPHU program.
2. Before formally offering any MPHU's, the Applicant must notify the Department of the date on which the Applicant will be ready to begin the marketing to Eligible Buyers. The notice must set forth, for each MPHU, its address, floor area, room mix, delivery date, estimated homeowners' association charges (if any), estimated annual property taxes and estimated annual utility expenses for sewer, water, electric and, if available, gas. The notice will also include floor plans and elevations for each MPHU or model of MPHU.
3. After receiving the offering notice, the Department must notify the Council of the offering. If the Department finds that the offering notice is complete, it will provide the Applicant with the Maximum Sale Price for each unit and authorize the Applicant to offer the MPHU's to Eligible Buyers during the Priority Marketing Period pursuant to rules established by the Department.
4. The Department will, with Council Approval, establish a selection system that considers household size, length of county residency, length of employment in the County and length of time since the person was certified for the MPHU program. The Department will coordinate with

5. the Applicant in the selection of specific Eligible Buyers identified by
6. Applicant during Applicant's marketing. If there are multiple, equally qualified Eligible Buyers seeking to buy the same MPHU, the purchaser will be selected by a lottery run by the Department.
7. The Department, with the approval of the County Council, may establish special selection criteria or MPHU allocations to address certain specific housing needs such as target workforce sectors or economic development initiatives.
8. The Priority Marketing Period for new MPHU's begins on the earlier to occur of (1) when the Department declares the offering notice complete, or (2) fifteen (15) days after submission of the offering notice to the Department and ends one-hundred eighty (180) days thereafter.
7. Any units available after expiration of the Priority Marketing Period will, upon written approval from the Department, be released to the Applicant for sale as market rate units without deed restrictions pursuant to the MPHU Agreement and subject to the Department's rights pursuant to the next section 72-10.B.

#### **B. Sale to the Department**

If no Eligible Buyer is found for an MPHU during the applicable Priority Marketing Period, the Department may:

1. Buy the MPHU, or allow a DDE to buy the MPHU, for the purpose of reselling it to an Eligible Buyer at a later date, or
2. Authorize Applicant to sell the MPHU in the open market without deed restrictions and to deliver any Excess Proceeds to the Department.

#### **§72-11 RESALE OF MPHU's**

A. Except for foreclosure proceedings (Section 72-13), MPHU's produced under the MPHU Program may only be resold during the Control Period at the following prices (the "Approved Resale Price"):

1. If the current Maximum Sale Price for an MPHU in the same tier as the MPHU to be sold is equal to or less than the prior price paid for the MPHU, including closing costs, then the Approved Resale Price is the prior price paid including closing costs.
2. If the current Maximum Sale Price for an MPHU in the same tier as the MPHU to be sold is greater than the prior price paid for the MPHU, including closing costs, then the Approved Resale Price is the original purchase price, including closing costs, plus three percent (3%) annual escalation from date of purchase to date of sale, but in no event more than the current Maximum Sale Price.

#### **B. Resale requirements during the Control Period**

1. Any MPHU offered for resale during the Control Period must first be offered to the Department at the Approved Resale Price. The Department will have sixty (60) days to exercise this option and, if exercised, closing will take place sixty (60) days thereafter. The Department may buy an MPHU when funds are available and the
2. Department finds that buying and reselling the MPHU will increase opportunities for Eligible Buyers to buy the MPHU.

3. If the Department does not buy the MPHU, the Department will notify seller of that fact and the Approved Resale Price and a ninety (90) day Priority Marketing Period will commence. During that period, the seller will market the MPHU to Eligible Buyers as described for new MPHU's in Section 72-10.A.
4. If no Eligible Buyer is identified, a resale MPHU may be offered for sale as a market rate unit without deed restrictions and free of any Approved Resale Price limitation after expiration of the Priority Marketing Period. Any Excess Proceeds from such a sale will be distributed to the Department.
5. The seller will submit to the Department for approval at least thirty (30) days prior to closing;
  - i. A copy of the proposed sales contract, including a list and the price of any personal property included in the sale, which contract will be contingent on Department approval.
  - ii. Draft of the settlement sheet.
  - iii. An affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.
5. A signed copy of the settlement sheet is to be provided to the Department immediately upon execution via facsimile from the settlement agent's office.
6. A transfer of an MPHU that does not comply with this Chapter and the Department will not release deed restrictions or provide any consents or estoppels until all required documents and affidavits have been submitted to and approved by the Department.
7. If the unit is resold during the Control Period, then a new Control Period begins.

C. There are no sale restrictions after expiration of any Control Period.

#### **§72-12 RESTRICTIONS ON MPHU OWNERS**

A. Every owner of an MPHU must occupy the MPHU as the owner's principal residence during the Control Period. Each owner must certify before taking occupancy that the owner will occupy the MPHU as owner's principal residence during the Control Period. The Director will require an owner who does not occupy the MPHU as the Eligible Buyer's principal residence to offer the MPHU for resale to another Eligible Buyer under the resale provisions of Section 72.12. Annual certification of principal residency from each owner will be required.

B. Except as provided in Section 72-12.C following, during the initial Control Period after the Date of Original Sale, and, if the MPHU is resold, the subsequent new Control Period, no liens other than the first mortgage will be permitted on an MPHU other than statutory liens for unpaid real estate taxes or assessments for infrastructure improvements and any liens validly recorded for unpaid homeowner association fees.

C. If an Eligible Buyer has owned an MPHU for five years or more, the Eligible Buyer may request permission from the Department to place a second mortgage on

the MPHU to provide for necessary capital improvements or for other purposes permitted by rules to be promulgated by the Department. The Department may approve the request if:

1. The Eligible Buyer provides evidence that it has an approved lender ready to make the requested loan; and
2. The Eligible Buyer provides evidence of approval from the first mortgagee that mortgagee approves the subordinate financing; and
3. The Department determines that the total of the first and second mortgages does not exceed 90% of the then prevailing Maximum Sale Price for an equivalent MPHU.

D. An owner of an MPHU, except the Department, may only rent the MPHU to any another party in certain limited and extraordinary circumstances approved by the Department (e.g., death of an owner).

1. The Department may allow rental of the MPHU for a period not to exceed twelve (12) months at rents set by the Department. Any approved rental will automatically amend the applicable MPHU covenants to extend the Control Period for a time equal to the approved rental period.
2. Any unapproved rental is a violation of this Ordinance and will result in a fine payable to Sussex County equal to (1) the full amount of any illegal rental received plus (2) five hundred dollars (\$500) per each month of illegal rental. Any amount unpaid after ninety (90) days is grounds for a lien against the MPHU and Sussex County may obtain a judgment and record the lien. If an illegal rental continues for more than six (6) months, Sussex County may sue to force a sale pursuant to the provisions of this Ordinance.

E. An owner may only sell an MPHU after first (1) notifying the Department of the proposed sale and (2) obtaining a current certificate of eligibility issued by the Department from the proposed buyer.

F. A person may own only one MPHU at any given time. If an MPHU owner is buying a different MPHU pursuant to this Ordinance, the Department, in its sole discretion, may authorize an overlapping ownership period of up to sixty (60) days.

G. If an MPHU owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must be an Eligible Buyer and must occupy the MPHU as his or her principal residence during the Control Period. If these conditions cannot be met, the new owner(s) must sell the MPHU to an Eligible Buyer pursuant to Section 72.12 of this Ordinance.

## **§72-13 DEFAULTS AND FORECLOSURES**

A. MPHU mortgages will include the following provisions.

1. The Department will request that approved lenders providing mortgages to Eligible Buyers provide a copy of any mortgage default notification to the Department no earlier than the forty-fifth (45<sup>th</sup>) day following delinquency and no later than the sixtieth (60<sup>th</sup>) day following delinquency. The Department will require that all approved lenders have the Eligible Buyer sign an authorization form permitting the loan servicer to give such notice to the Department.
2. The MPHU owner must provide a copy of any mortgage default notification immediately upon receipt.

3. In such event, the Director shall make every effort to work with the owner to reconcile the delinquency/default, including a deed in lieu of foreclosure, referral to an agency skilled in mortgage default counseling, sale to another Eligible Buyer or Department-designated entity (if no Eligible Buyers are interested in the MPHU). The Department will have sixty (60) days from date of notification to assist the homeowner in curing the default.
4. If the Director determines that the waiting list of Eligible Buyers warrants retaining the MPHU in inventory and if funding is available, the Director is authorized to notify the mortgagee that the Department or DDE guarantees payoff of the outstanding principal balance, interest, taxes, insurance, fees provided for in the mortgage and any foreclosure-related expenses including, but not limited to, expenses of marketing the property within sixty (60) days in return for cancellation of foreclosure actions. Prior to making such notification, the Department will secure the MPHU owner's consent to sell the property and will coordinate with mortgagee or its servicing agent. Should the MPHU owner not consent to a sale and should the default not be cured, the foreclosure could proceed. The Department reserves the right to purchase the MPHU at the foreclosure sale, thereby ensuring a renewed Control Period. The Department will take into consideration the possible legal costs associated with eviction in determining whether or not to bid at the foreclosure sale. If the mortgagee is the successful bidder at the foreclosure sale, the Department will have the option to pursue purchase of the property from the lender within thirty (30) days of the foreclosure sale. The Department assumes recourse for any necessary eviction proceedings. In the event the Department purchases the MPHU, the Department will pay the principal, interest and other costs outlined above to the mortgagee up to, but not exceeding, current market value (without deed restrictions) as determined by mortgagee's appraiser. Title to the MPHU property will then pass to the Department. The Department will thereupon re-offer the property in accordance with the MPHU program to Eligible Buyers, with the requirement that the Department is, to the extent possible, made whole for monies spent in the process of obtaining the property in the MPHU program.

**B. MPHU mortgages and covenants will provide that, if an MPHU is sold through a Foreclosure Event, a payment must be made to the Department as follows:**

1. If a Foreclosure Event occurs during the Control Period and if the accepted bid at the foreclosure sale exceeds the Approved Resale Price, Excess Proceeds will be paid to the Department in lieu of the former MPHU owner. The Department is responsible for monitoring Foreclosure Events and ensuring recapture of any excess funds.
2. If the accepted bid at the foreclosure sale is less than the Approved Sale Price, no payment is due to the Department.
3. If the Foreclosure Event occurs after the 20-year Control Period, then no payment is necessary to the Department.

#### **74-14 PHASED IMPLEMENTATION OF ORDINANCE**

**A. To assist the Council in assuring that the Program achieves the objectives outlined in the Ordinance, Council will establish a test period during which Council, supported by the Departments of Community Development and Housing and Planning and Zoning, will test the effectiveness of the Ordinance and its associated rules and regulations. The test period will be long enough for the initial MPHU projects to be processed, developed and sold to Eligible Buyers, which period shall be 24 months. Improvements to concepts, processes and rules and regulations identified during the test period will be incorporated into future amendments of the**

**Ordinance.** Council views this Ordinance 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 MPHU programs. The Ordinance will not be fully implemented until the test period is completed and the Ordinance hereafter amended to include any additional provisions Council determines are needed prior to the expiration of the test period.

**B.** The section further establishes a Request for Proposal (“RFP”) process to select Program participants during the test period. 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 MPHU’s created until the actual market for MPHU’s is better understood and quantified and until Program guidelines related to marketing, sale, financing, resale and ownership are tested and finalized.
- 3.** Allow Applicants to present alternative approaches to lot sizes, housing types, density incentives and other Program features to encourage better overall land use, creation of MPHU’s in high land cost areas or similar potentially desirable outcomes. Alternative approaches deemed successful by the Council will be incorporated in the amendment to the Ordinance prior to full implementation.
- 4.** Ensure that the letter of the Ordinance produces results that are consistent with the spirit of the Ordinance by allowing Council to amend the Ordinance as needed based on actual experience prior to final promulgation and full adoption.

**C.** During the Phased Implementation period, Council directs the Director, Planning & Zoning to exploring existing zoning classifications, to consider new zoning classifications and to consider overlay designations that can be modified or created to encourage the creation of MPHU’s, particularly in the coastal area of the County. The findings of this study will be used by Council in considering changes to the County’s Comprehensive Plan during its next scheduled update.

#### **§72-15 GOVERNMENT REGULATIONS, ENFORCEMENT**

- 1.** The Department must maintain a list of all MPHUs constructed and sold under this Program, and the Sussex County Council may, from time to time, adopt regulation necessary to administer this program.
- 2.** The Director may, with Council approval, waive or modify the provisions of the MPHU Program if the Director finds that the Program in conflict with state or federal housing laws.
- 3.** This Program applies to all agents, successors, and assigns of an applicant. A building permit must not be issued, and a preliminary plan of subdivision, development plan, or site plan must not be approved unless it meets the requirements of this program. The Director of Planning and Zoning may deny, suspend, or revoke any building or occupancy permit upon finding a violation of this Program. Any prior approval of a preliminary 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 must 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.
- 4.** 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.

5. The Director may take legal action to stop or cancel any transfer of an MPHU if any party to the transfer does not comply with all requirements of this Program. The Director may recover any funds improperly obtained from any sale or rental of an MPHU in violation of this Chapter.

6. In addition to or instead of any other available remedy, the Director may take legal action to:

- a. Enjoin an MPHU owner who violated this Program, or any covenant signed or order issued under this Program, from continuing the violation, or
- b. Require an owner to sell an MPHU owned or occupied in violation of this Program to an eligible buyer.
- c. The Director may take action if the MPHU are illegally rented or lease.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY ORDINANCE NO. 1821 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 17TH DAY OF JANUARY 2006.**



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

