

ORDINANCE NO. 2889

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28 AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45, 115-50, 115-53 AND 115-58 REGARDING AFFORDABLY PRICED RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT (SCRP) PROGRAM.

WHEREAS, Sussex County Council has adopted the 2018 Comprehensive Development Plan (the “Plan”); and

WHEREAS, The Housing Element of the Plan contains the following “Housing Vision”: To ensure the provision of decent, safe, affordable and safe housing opportunities to improve communities and quality of life for the residents of Sussex County; and

WHEREAS, The Housing Element of the Plan recognizes that an influx of new residents in Sussex County has fueled prosperity in the County’s real estate market, hospitality industry, and related economic sectors, yet most housing, particularly on the eastern side of the County, is new and often unaffordable to low-income families, seasonal employees, entry-level workers, or recent college graduates; and

WHEREAS, The Housing Element of the Plan recognizes that “the shortage of affordable housing remains a very real problem for low to moderate-income households in Sussex County, including many with full-time, year-round jobs; and

WHEREAS, Goal 8.2 of the Housing Element within the Plan states that Sussex County should “Ensure that a diversity of housing opportunities are available to meet the needs of residents of different ages, income levels, abilities, national origins and household configurations”; and

WHEREAS, Objective 8.2.1 and Strategy 8.2.1.1 of the Housing Element within the Plan states that Sussex County will “Affirmatively further affordable and fair housing opportunities in the County to accommodate the needs of all residents” and in so doing “improve the County’s SCRPs and MPHUs Programs to provide incentives to properly reflect the housing market and incentivize developers to participate in the provision of affordable housing”; and

WHEREAS, Strategy 8.2.1.3 of the Housing Element within the Plan states that Sussex County should “explore ways for private developers to provide multi-family and affordable housing opportunities; and

WHEREAS, Objective 8.2.3 and Strategies 8.2.3.1, 8.2.3.2 and 8.2.3.6 of the Housing Element within the Plan state that Sussex County should “facilitate and promote land use policies that enable an increase in the supply of affordable housing in areas with adequate infrastructure” by “increasing affordable housing options, including the supply of rental units, near employment opportunities”; by reviewing “County code to determine if there are regulatory barriers to development of affordable housing”; and by “revisiting [the] zoning code to determine in districts

where multifamily housing is currently a conditional use, if it should be made a permitted use if water and sewer are already present and available on the site”; and

WHEREAS, Strategy 8.3.1.1. of the Housing Element within the Plan states that Sussex County should “evaluate current County code on an on-going basis to determine if any regulatory barriers exist that impede the development of multi-family and affordable housing”; and

WHEREAS, this Ordinance is in furtherance of these Goals, Objectives and Strategies as set forth in the of the Housing Element within the Plan; and

WHEREAS, Sussex County Council commissioned a study of Housing Opportunities and Market Evaluation to evaluate and recommend strategies and policies designed to promote housing choice and economic vitality for Sussex County’s residents and workforce; and

WHEREAS, in November of 2019, LSA, the housing consultant retained by Sussex County Council, issued its Final Report on “Housing Opportunities and Market Evaluation” following an eight-month initiative that included input from residents, homebuilders, developers, housing advocates, County staff, County Council and Planning Commissioners (“the LSA Report”); and

WHEREAS, one of the primary Strategy Recommendations included in the LSA Report was a recommendation to “Modify the Zoning Code to promote housing affordability in the Growth Areas identified in the Comprehensive Plan, including the allowance for a maximum density of 12 units per acre “by-right” where affordable housing units are provided; and

WHEREAS, this Ordinance carries out the Goals, Objectives and Strategies of the Sussex County Comprehensive Plan and the LSA Report; and

WHEREAS, Sussex County Council, with the assistance of the Office of Community Development and Housing, has determined that the current Sussex County Rental Unit program contained in Chapter 72 of the Code of Sussex County requires an update based upon lessons learned in the implementation and application of that Chapter to the single rental project in Sussex County that has utilized the Program; and

WHEREAS, Sussex County Council, with the assistance of the Office of Community Development and Housing, has determined that the current Sussex County Rental Unit program contained in Chapter 72 of the Code of Sussex County should be revised to attract more affordable housing developments within Sussex County; and

WHEREAS, it has been determined that this Ordinance promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County, Chapter 72, Article II, §72-16 through 72-28 is hereby amended by deleting the language in brackets and inserting the italicized and underlined 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 "SCRCP" or "program."

§ 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.
- B. 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. 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 effect on the environment and transportation, but commuting also comes with high fuel expenses.
- D. 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.

§ 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 Growth Areas as defined within the County's most current comprehensive plan and Areas of Opportunity as defined by the Delaware State Housing Authority to include [a minimum percentage 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).

§ 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 affordable rental units on qualifying land in one or more subdivisions, parts of subdivisions, resubdivisions, multi-family townhouse developments or phases of development under the terms and conditions as set forth in this article.
- B. With respect to land in zones not subject to subdivision approval or site plan review, applies for building permits for the construction of 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 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 [a]Applicant if:

- A. The property lines are contiguous; or
- B. The property lines are separated only by a public or private right-of-way at any point; or
- C. The property lines are separated only by other land of the [a]Applicant and not subject to this section at the time of the submission of an application or development plan by the [a]Applicant.

[CERTIFICATE OF ELIGIBILITY

A certificate valid for a period of time, which is issued to eligible tenants by the landlord (defined below) and supplied to the Department (defined below) as further set forth within this article. 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 lease (defined below).]

DATE OF LEASE

The date of the initial lease agreement signing of an approved [e]Eligible [t]Tenant for a SCRP [u]Unit.

DENSITY INCENTIVE

[Any increase in density pursuant to § 72-21 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 subdivision regulations then in effect.] The density permitted by §72-21 and as a permitted use for SCRP projects in Chapter 115.

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

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 [i]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 [e]Eligible [t]Tenant and all other adults (age 18 and older) who will occupy the SCRP

[u]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 [l]Landlord in order to accurately verify the potential tenant's qualifications and income, 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.

ELIGIBLE TENANT

Person(s):

- A. Whose household *income is within the Eligible Income* [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 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 [a]Applicant's placement in the list of pending applications. The expedited review is provided to the [a]Applicant to assist the [a]Applicant in managing, to the extent possible, the risk of changes to cost, interest rates, schedule and other factors that the [a]Applicant is taking on by virtue of participation in the SCRP. If an [a]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 [a]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 [u]Units or an entity designated by the owner to manage and lease dwelling units.

QUALIFYING LAND

All land that:

- A. Is owned by or under contract to the [a]Applicant; and
- B. [Is located within a 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] Allows the SCRP Units as a Permitted Use pursuant to Chapter 115.

[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 (SCRUP UNIT)

A dwelling which is:

A. Offered for lease to [e]Eligible [t]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.

§ 72-20 Minimum standards of eligibility for tenants.

A. *There shall be a preference given to tenants who have worked or resided in Sussex County for at least one year preceding the application to the SCRUP. In addition, e[E]ligible [t]Tenants must:*

(1) Have proof of citizenship.

(2) Be of [e]Eligible [i]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 SCRUP. 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)](3) [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] Comply with the criminal history and credit requirements for tenants of all leases within the proposed housing development.

(5) Occupy the SCRUP [u]Unit as the tenant's principal residence during the lease period. Each [e]Eligible [t]Tenant must certify before taking occupancy that the tenant will occupy the SCRUP [u]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, including changes to eligibility requirements for tenants as recommended by the Department.

§ 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 SCRCP with the execution of a SCRCP [a]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 SCRCP density bonus, shall not exceed 12 units per acre.] *See Permitted Uses in Chapter 115.*
- B. Expedited review. A project entering the SCRCP through execution of an SCRCP [a]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 SCRCP projects.]

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

- [A. Applicants must contribute 12.5% of all units to SCRCP inventory. In applying and calculating the number of 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 or less, the minimum number of SCRCP units must be one unit.
- B.] A. All parcels in the proposed project must be on qualifying land, as defined in § 72-19.
- [C]B. All units contributed as SCRCP [u]Units will remain at the affordable rental rates specified herein [for the remainder of the control period]. SCRCP [u]Units shall never be leased as market-rate units [during the control period], regardless of vacancy, except in accordance with § 72-23N(1).
- D. SCRCP [u]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 [u]Units shall be equipped with the same basic appliances as the market rate units, such as an oven, refrigerator, dishwasher, and washer and dryer.

§ 72-23 SCRCP Agreements.

To participate in the SCRCP and secure any incentives provided for herein, an [a]Applicant must execute an SCRCP [a]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 [u]Units to be constructed in the project. If a final site plan has not been approved when the SCRCP [a]Agreement is executed, an amendment to the SCRCP [a]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).] A description of how the SCRCP Units will be marketed and delivered. The SCRCP Units must be constructed and delivered in equal proportion to non-SCRCP Units within the development.
- (1) Applicants [should] *shall* affirmatively market the SCRCP [U]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 [a]Applicant's control, in development and construction costs, interest rates, processing and construction schedules, permitting and any other factor impacting the [a]Applicant's costs and development obligations are borne solely by the [a]Applicant.
- D. Building permits, performance bonds and letters of credit.
- [(1)] No building permits shall be issued in any subdivision or housing development where SCRCP [u]Units are included until the [a]Applicant executes a valid SCRCP [a]Agreement which applies to the entire subdivision.
- [(2)] If an applicant does not build the SCRCP units in accordance with the construction schedule along with or before other dwelling units the County Administrator may withhold building permits or call in performance bond or letter of credit from the applicant until the SCRCP units contained in the construction schedule are built and contributed to SCRCP rental inventory to the satisfaction of the Department.]
- E. Be signed by the [a]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. SCRCP [a]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 SCRCP [a]Agreement through voluntary dissolution, bankruptcy, or the sale or transfer of qualifying land.

- G. The SCRP [a]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 [a]Applicant's obligations under the SCRP [a]Agreement.
- H. Landlords are responsible for marketing, leasing, and determining tenant eligibility for the SCRP [u]Units. [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 [e]Eligible [t]Tenant [without providing the Department with just cause, to the Department's satisfaction, for the refusal]. The reasons for a refusal to rent to an Eligible Tenant shall be documented and included in the Annual Audit and Certification required by §72-28
- I. If the [a]Applicant is not also the builder, the relationship between the [a]Applicant and the builder shall be fully disclosed to the Department's satisfaction, as soon as the relationship is established.
- J. SCRP [u]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-SCRP [u]Units. When the SCRP [u]Units are a part of a phased development, a proportionate number or percentage of said [u]Units will be placed within each phase and/or constructed within each housing type appearing in the development. The planning and design of individual SCRP [u]Units must be consistent with the planning and design of non-SCRP Units (i.e. market-rate units) within a single project.
- (1) The ratio of SCRP [u]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 SCRP [u]Units should also be 2:1.
- K. [The applicant will execute and record covenants confirming that]The SCRP Agreement shall be recorded in the Office of the Recorder of Deeds confirming that:
- (1) The covenants contained within it will bind the [a]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 SCRP [a]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 [a]Applicant, the property shall remain subject to all of the terms and conditions contained in the SCRP [a]Agreements by the [a]Applicant required under the chapter [during the control period]. The source of the SCRP [a]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 [a]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 SCRP [a]Agreement requires that the [l]Landlord ensure that the SCRP [u]Units are occupied only by tenants whose [monthly] *annual* income levels do not exceed the eligible income limit, and shall prohibit tenants from subletting or subleasing the [u]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.]

(1) In addition, the [l]Landlord must supply the information listed below in a format acceptable to the Director on an annual basis:

(a) The number of SCRP [u]Units, by bedroom count, that are leased to [e]Eligible [t]Tenants and those that are vacant, and the monthly rent charged for each SCRP [u]Unit;

(b) For each SCRP [u]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;

(c) A statement that, to the best of the [l]Landlord's information and knowledge, tenants who are leasing the SCRP [u]Units meet the eligibility criteria[; and

(d) A copy of each new or revised certificate of eligibility obtained since the last annual report].

(2) The Department shall audit the report and may require such additional information *monthly* needed to evaluate and accept the annual report.

N. The tenant must vacate the SCRP [u]Unit if the tenant's household income exceeds 80% of the area median income by 20% *at the time of lease renewal*. The [a]Applicant must take the necessary action to have the tenant vacate the SCRP [u]Unit within six months of receiving information that the tenant's household income exceeds the [e]Eligible [i]Income limit.

(1) Notwithstanding the provisions of § 72-23N above, if the [a]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 [u]Unit referenced in § 72-23N above may continue to lease such [u]Unit at the market value rent.

O. The Landlord shall comply with the Annual Audit and Certification Requirements of Section 72-28

§ 72-24 SCRP [u]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.
- (2) The [e]Eligible [t]Tenant must provide to the [l]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 [e]Eligible [t]Tenant was not required to file tax returns or if the [l]Landlord believes that information from the previous tax returns is insufficient to determine income, the [l]Landlord is authorized to request such information as it deems necessary to confirm the income levels of the proposed tenants.

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

Unit Size (number of bedrooms)	Household Size
Efficiency	1
1	1 to 2
1 plus Den	2 to 4
2	2 to 4
2 plus Den	2 to 4
3	4 to 6
4	5 to 8

§ 72-25 Leasing of SCRP [u]Units.

A. Leases to [e]Eligible [t]Tenants.

- (1) Every SCRP [u]Unit constructed under this program must be offered to all [e]Eligible [t]Tenants for lease as the [e]Eligible [t]Tenant's principal residence. Notification to the public of SCRP [u]Unit availability will be made by the [l]Landlord and is recommended to be made by advertising on DelawareHousingSearch.org *and similar sites*. The Department may, but is not obligated to, provide notice of SCRP [u]Unit availability through the Department's website.
- (2) The [l]Landlord will determine SCRP tenant eligibility under § 72-20[, and lease agreements shall not be signed until the tenant has received a certificate of eligibility from the landlord].
- (3) Annually, the Department will provide updated income guidelines and rental rates to the [l]Landlord for use in leasing the SCRP [u]Units.

- (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 [u]Units shall cover a period of one year.
- (6) An [e]Eligible [t]Tenant already occupying a SCRP [u]Unit [has] *shall have a* first-option to renew the lease agreement each year, as long as the tenant maintains good standing with the [l]Landlord and continues to qualify as an [e]Eligible [t]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 [u]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 [l]Landlord by the date that may be specified in their lease or that may otherwise be specified by the [l]Landlord.

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

§ 72-26 Foreclosure or default.

A. The [l]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.]

§ 72-27 Implementation.

Improvements to concepts, processes and rules and regulations of the SCRP program will be incorporated into future amendments of this article. Council views this 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.

§72-28 Annual Audit and Certification.

The Landlord shall contract with an independent Delaware Certified Public Accountant that has no other relationship with the Landlord/Developer/Owner/Manager to audit the Landlord's Compliance with this Chapter 72, the conditions of approval for the project, the terms of the SCRP Agreement, the rental of the SCRP Units and the status of the Eligible Tenants (and their Eligible Income) within the project. In this engagement, the Delaware Certified Public Accountant will perform this obligation in accordance with attestation standards established by the American Institute of Certified Public Accountants. This annual audit and report shall certify that the project remains in compliance with (i) all of the Chapter 72 requirements and the terms of the SCRP Agreement; (ii) the status of each of the SCRP Units (whether leased or vacant); (iii) certification that each of the Eligible Tenants renting an SCRP Unit within the project are an Eligible Tenant as of the date of the annual audit and report; (iv) the status and duration of any vacancy of any SCRP Unit; (v) the marketing efforts to re-let any vacant SCRP Unit to an Eligible Tenant; (vi) the status of any list of Eligible Tenants waiting for an SCRP Unit to come available; and (vii) such other information as the Delaware Certified Public Accountant and/or the Community Development and Housing Office may deem appropriate and necessary. This annual audit and report shall be submitted to both the Office of Planning & Zoning and the Community Development & Housing Office no later than March 1 of each year.

§ 72-2[8]2 Government regulations; enforcement.

- A. The Department will maintain a list of all SCRP [u]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. Therefore, Sussex County shall commence a comprehensive review of this SCRP Program on or before January 1, 2028.
- B. The Director may, with Council approval, waive or modify the provisions of the 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 [a]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 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 [a]Applicant, or a successor, or assign of any [a]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 certificates of compliance or occupancy from the [a]Applicant for any violation of this program.

D. In the event that the Landlord rents any of the SCRP Units at non-SCRP Unit rates (i.e. market rental rates) so that the proportionate share of SCRP Units versus non-SCRP Units as originally approved is not maintained, the Landlord of the project shall be required to pay to Sussex County the monthly market rent collected from any such SCRP Unit that is rented at a non-SCRP Unit Rate. Any such funds collected by Sussex County shall be used for housing purposes and administered by the Sussex County Office of Community Development and Housing.

D]E. 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]F. The Director may take legal action to stop or cancel any lease of an SCRP [u]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 SCRP [u]Unit in violation of this chapter.

[F]G. In the event of litigation to enforce the terms and conditions of this chapter or any agreement or obligation under the SCRP program, 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 2. The Code of Sussex County, Chapter 115, Article IV, §115-20 “Permitted Uses”, is hereby amended by inserting the italicized and underlined language as a new subpart A.(17) thereof as follows:

§115-20 Permitted Uses.

A. A building or land shall be used only for the following purposes:

...

(17) A Sussex County Rental Program, or SCRP, townhouse or multi-family development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

(a) The site must be located within a Town Center, a Developing Area, Commercial Area or the Coastal Area as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan.

(b) The site shall be located within 2,640 feet of a Principal Arterial Road, Minor Arterial Road or Major Collector Road as classified by the Delaware Department of Transportation. In addition, an Applicant should make every effort to coordinate with DART for transit access to and from the site.

(c) The site must be served by a central sewer system and a central water system.

(d) The total maximum number of dwelling units (including both SCRP Units and non-SCRP Units) that may be permitted shall be determined by dividing the gross area by 3,630 square feet. "Gross area" shall exclude any area designated as a tidal tributary stream or tidal wetlands by § 115-193.

(e) There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the "Forested and/or Landscaped Buffer Strip" identified in Section 99-5. This setback may include walking and biking trails.

(f) The height of any townhouse or multi-family buildings shall not exceed 52 feet or four stories, whichever is greater. Provided, however, that if the height does not exceed 42 feet, then the setback described in this subsection shall be reduced from one hundred feet to fifty feet.

(g) There shall be sidewalks on at least one side of all streets, roadways and parking areas, with interconnectivity to adjacent walkway systems wherever possible.

(h) There must be interconnectivity with any adjacent property that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

(i) There shall be open space that exceeds fifty percent of the gross area of the entire site.

(j) Sussex County shall commence a comprehensive review of the provisions of this SCRP program as set forth herein on or before January 1, 2028.

Section 3. The Code of Sussex County, Chapter 115, Article IV, §115-25 "Height, Area and Bulk Requirements", is hereby amended by inserting the italicized and underlined language as a new subpart G thereof as follows:

§115-25 Height, Area and Bulk Requirements.

...

G. Sussex County Rental Unit development permitted by §115-20A.(17). The minimum lot size, lot area per dwelling unit, open space, height and setback requirements for a Sussex County Rental Unit development permitted by §115-20A.(17) shall be governed by the dimensional requirements set forth in that Section.

Section 4. The Code of Sussex County, Chapter 115, Article V, §115-29 "Permitted Uses", is hereby amended by inserting the italicized and underlined language as a new subpart K. thereof as follows:

§115-29 Permitted Uses.

A building or land shall be used only for the following purposes:

...

K. A Sussex County Rental Program, or SCRP, townhouse or multi-family development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

(1) The site must be located within a Town Center, a Developing Area, the Commercial Area or the Coastal Area as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan.

(2) The site shall be located within 2,640 feet of a Principal Arterial Road, Minor Arterial Road or Major Collector Road as classified by the Delaware Department of Transportation. In addition, an Applicant should make every effort to coordinate with DART for transit access to and from the site.

(3) The site must be served by a central sewer system and a central water system.

(4) The total maximum number of dwelling units (including both SCRP Units and non-SCRP Units) that may be permitted shall be determined by dividing the gross area by 3,630 square feet. "Gross area" shall exclude any area designated as a tidal tributary stream or tidal wetlands by § 115-193.

(5) There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the "Forested and/or Landscaped Buffer Strip" identified in Section 99-5. This setback may include walking and biking trails.

(6) The height of any townhouse or multi-family buildings shall not exceed 52 feet or four stories, whichever is greater. Provided, however, that if the height does not exceed 42 feet, then the setback described in this subsection shall be reduced from one hundred feet to fifty feet.

(7) There shall be sidewalks on at least one side of all streets, roadways and parking areas, with interconnectivity to adjacent walkway systems wherever possible.

(8) There must be interconnectivity with any adjacent property that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

(9) There shall be open space that exceeds fifty percent of the gross area of the entire site.

(10) Sussex County shall commence a comprehensive review of the provisions of this SCRP program as set forth herein on or before January 1, 2028.

Section 5. The Code of Sussex County, Chapter 115, Article V, §115-34 “Height, Area and Bulk Requirements”, is hereby amended by inserting the italicized and underlined language as a new subpart D. thereof as follows:

§115-34 Height, Area and Bulk Requirements.

...

D. Sussex County Rental Unit development permitted by §115-29K. The minimum lot size, lot area per dwelling unit, open space, height and setback requirements for a Sussex County Rental Unit development permitted by §115-29K shall be governed by the dimensional requirements set forth in that Section.

Section 6. The Code of Sussex County, Chapter 115, Article VI, §115-37 “Permitted Uses”, is hereby amended by inserting the italicized and underlined language as a new subpart C. as follows:

§115-37 Permitted Uses.

Permitted uses are as follows:

...

C. A Sussex County Rental Program, or SCRP, townhouse or multi-family development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

(1) The site must be located within a Town Center, a Developing Area, the Commercial Area or the Coastal Area as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan.

(2) The site shall be located within 2,640 feet of a Principal Arterial Road, Minor Arterial Road or Major Collector Road as classified by the Delaware Department of Transportation. In addition, an Applicant should make every effort to coordinate with DART for transit access to and from the site.

(3) The site must be served by a central sewer system and a central water system.

(4) The total maximum number of dwelling units (including both SCRP Units and non-SCRP Units) that may be permitted shall be determined by dividing the gross area by 3,630 square feet. "Gross area" shall exclude any area designated as a tidal tributary stream or tidal wetlands by § 115-193.

(5) There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the “Forested and/or Landscaped Buffer Strip”

identified in Section 99-5. This setback may include walking and biking trails.

(6) The height of any townhouse or multi-family buildings shall not exceed 52 feet or four stories, whichever is greater. Provided, however, that if the height does not exceed 42 feet, then the setback described in this subsection shall be reduced from one hundred feet to fifty feet.

(7) There shall be sidewalks on at least one side of all streets, roadways and parking areas, with interconnectivity to adjacent walkway systems wherever possible.

(8) There must be interconnectivity with any adjacent property that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

(9) There shall be open space that exceeds fifty percent of the gross area of the entire site.

(10) Sussex County shall commence a comprehensive review of the provisions of this SCRCP program as set forth herein on or before January 1, 2028.

**Section 7. The Code of Sussex County, Chapter 115, Article VI, §115-42 “Height, Area and Bulk Requirements”, is hereby amended by inserting the italicized and underlined language as a new subpart D. thereof as follows:
§115-42 Height, Area and Bulk Requirements.**

...

D. Sussex County Rental Unit development permitted by §115-37C. The minimum lot size, lot area per dwelling unit, open space, height and setback requirements for a Sussex County Rental Unit development permitted by §115-37C shall be governed by the dimensional requirements set forth in that Section.

Section 8. The Code of Sussex County, Chapter 115, Article VII, §115-45 “Permitted Uses”, is hereby amended by inserting the italicized and underlined language as a new subpart F. thereof as follows:

§115-45 Permitted Uses.

Permitted uses are as follows:

...

F. A Sussex County Rental Program, or SCRCP, townhouse or multi-family development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRCP Units pursuant to Chapter 72. The SCRCP development must satisfy the following criteria:

(1) The site must be located within a Town Center, a Developing Area, the Commercial Area or the Coastal Area as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan.

(2) The site shall be located within 2,640 feet of a Principal Arterial Road, Minor Arterial Road or Major Collector Road as classified by the Delaware Department of Transportation. In addition, an Applicant should make every effort to coordinate with DART for transit access to and from the site.

(3) The site must be served by a central sewer system and a central water system.

(4) The total maximum number of dwelling units (including both SCRP Units and non-SCRP Units) that may be permitted shall be determined by dividing the gross area by 3,630 square feet. "Gross area" shall exclude any area designated as a tidal tributary stream or tidal wetlands by § 115-193.

(5) There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the "Forested and/or Landscaped Buffer Strip" identified in Section 99-5. This setback may include walking and biking trails.

(6) The height of any townhouse or multi-family buildings shall not exceed 52 feet or four stories, whichever is greater. Provided, however, that if the height does not exceed 42 feet, then the setback described in this subsection shall be reduced from one hundred feet to fifty feet.

(7) There shall be sidewalks on at least one side of all streets, roadways and parking areas, with interconnectivity to adjacent walkway systems wherever possible.

(8) There must be interconnectivity with any adjacent property that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

(9) There shall be open space that exceeds fifty percent of the gross area of the entire site.

(10) Sussex County shall commence a comprehensive review of the provisions of this SCRP program as set forth herein on or before January 1, 2028.

Section 9. The Code of Sussex County, Chapter 115, Article VII, §115-50 "Height, Area and Bulk Requirements", is hereby amended by inserting the italicized and underlined language as a new subpart G. thereof as follows:

§115-50 Height, Area and Bulk Requirements.

...

G. Sussex County Rental Unit development permitted by §115-45F. The minimum lot size, lot area per dwelling unit, open space, height and setback requirements for a Sussex County Rental Unit development permitted by §115-45F. shall be governed by the dimensional requirements set forth in that Section.

Section 10. The Code of Sussex County, Chapter 115, Article VIII, §115-53 "Permitted Uses", is hereby amended by inserting the italicized and underlined language as a new subpart K. thereof as follows:

§115-53 Permitted Uses.

A building or land shall be used only for the following purposes:

...

K. A Sussex County Rental Program, or SCRP, townhouse or multi-family development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

(1) The site must be located within a Town Center, a Developing Area, the Commercial Area or the Coastal Area as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan.

(2) The site shall be located within 2,640 feet of a Principal Arterial Road, Minor Arterial Road or Major Collector Road as classified by the Delaware Department of Transportation. In addition, an Applicant should make every effort to coordinate with DART for transit access to and from the site.

(3) The site must be served by a central sewer system and a central water system.

(4) The total maximum number of dwelling units (including both SCRP Units and non-SCRP Units) that may be permitted shall be determined by dividing the gross area by 3,630 square feet. "Gross area" shall exclude any area designated as a tidal tributary stream or tidal wetlands by § 115-193.

(5) There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the "Forested and/or Landscaped Buffer Strip" identified in Section 99-54. This setback may include walking and biking trails.

(6) The height of any townhouse or multi-family buildings shall not exceed 52 feet or four stories, whichever is greater. Provided, however, that if the height does not exceed 42 feet, then the setback described in this subsection shall be reduced from one hundred feet to fifty feet.

(7) There shall be sidewalks on at least one side of all streets, roadways and parking areas, with interconnectivity to adjacent walkway systems wherever possible.

(8) There must be interconnectivity with any adjacent property that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

(9) There shall be open space that exceeds fifty percent of the gross area of the entire site.

(10) Sussex County shall commence a comprehensive review of the provisions of this SCRP program as set forth herein on or before January 1, 2028.

Section 11. The Code of Sussex County, Chapter 115, Article VIII, §115-58 “Height, Area and Bulk Requirements”, is hereby amended by inserting the italicized and underlined language as a new subpart E. thereof as follows:

§115-58 Height, Area and Bulk Requirements.

...

E. Sussex County Rental Unit development permitted by §115-53K. The minimum lot size, lot area per dwelling unit, open space, height and setback requirements for a Sussex County Rental Unit development permitted by §115-53K shall be governed by the dimensional requirement set forth in that Section.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2889 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 18TH DAY OF OCTOBER 2022.

Tracy N. Torbert
Clerk of the Council