

ORDINANCE NO. 4060

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72, ARTICLE II, SECTION 72-24 AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII SECTIONS 115-20, 115-29, 115-37, 115-45 AND 115-53 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 “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 state 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 SCRCP and MPHU 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, 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, Sussex County Council, with the assistance of the Office of Community Development and Housing, has determined that the current Sussex County Rental Program has been underutilized based upon impacts to such developments; and

WHEREAS, Sussex County Council commissioned a Land Use Reform Working Group that developed multiple recommendations for improvements to the Sussex County Code regarding housing and land use and one of the recommendations included an update to the Sussex County Rental Unit program as reflected in this Ordinance; 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, 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, §72-24 "SCRIP Units" is hereby amended by deleting the language in brackets and inserting the italicized and underlined language as follows:

§ 72-24 SCRIP Units.

A. Rent.

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

(1) Rent shall be established and updated annually by the Department for the SCRIP units based on 25% of the household income in the amounts of 60%, 70% or 80% of the area median income adjusted for household size and unit size of the respective unit (not including trash services, parking, water and sewer utilities and any other charges to be paid by the tenant) based on the following unit allocations:

(a) The number of units in the SCRIP charging rent at 25% of household income for 60% of the area median income adjusted for household size shall be multiplied by a factor of 1.67.

(b) The number of units in the SCRIP charging rent at 25% of household income for 70% of the area median income adjusted for household size shall be multiplied by a factor of 1.25.

- (c) The number of units in the SCRP charging rent at 25% of household income for 80% of the area median income adjusted for household size shall be multiplied by a factor of 1.00.

There shall always be a mixture of the units described in (a), (b) and (c) above. The total value of the multipliers for all of the units must exceed 25% of the total number of units in the SCRP and must include a mixture of units at 60%, 70%, and 80% AMI.

Provided, however, that the rent charged for market rate units similar to SCRP units in the SCRP development shall not be within 20% of the countywide SCRP rents for that type of SCRP unit. If this occurs, the Department shall adjust the SCRP rate table for the SCRP development so that the rent for the SCRP units is 20% less than the market rate rent for comparable units in the SCRP development.

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Section 2. The Code of Sussex County, Chapter 115, Article IV, §115-20 "Permitted Uses", is hereby amended by deleting the language in brackets and inserting the italicized and underlined language 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 Sussex County Rental Program, or SCRP development governed by, and subject to, Chapter 72, where there are SCRP units provided in accordance with minimum allocation calculation required by §72-24 therein. The SCRP development must also satisfy the following criteria:

(a) 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.

(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] Tidal Waters or Tidal Wetlands by § 115-193.

(e) [There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the perimeter buffers and perimeter buffer protection areas (if Perimeter Buffer Protection Areas are required) set forth in §99-21.A. This setback may include walking and biking trails.] *There shall be a setback around the entire site as follows:*

50 feet from any boundary adjoining a residential district and from all state road rights of way. This setback shall incorporate perimeter buffers and perimeter buffer protection areas (if required) set forth in 99-21A.

10 feet from any boundary adjoining a commercial, business, marine, institutional or industrial district. Perimeter buffers and perimeter buffer protection areas shall not be required.

(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 100 feet to 50 feet.] *The height of any buildings shall not exceed 60 feet, provided, however, that if the height exceeds 42 feet and the site is adjacent to a residential district, the building(s) shall include a stepback design above 42 feet and/or an increased setback to ensure an appropriate relationship between the higher density SCRP project and uses of low intensity or height, existing or future, outside the proposed SCRP project. The linear dimensional requirements, including length and building separation, contained in §115-188D.(6) and E.(1) and (2) shall not apply.*

(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 wherever appropriate as determined by the Commission.

(i) There shall be open space that exceeds [50]30% 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 V, §115-29 "Permitted Uses", is hereby amended by deleting the language in brackets and inserting the italicized and underlined language as follows:

§115-29 Permitted Uses.

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

...

M. [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 Sussex County Rental Program, or SCRP development governed by, and subject to, Chapter 72, where there are SCRP units provided in accordance with minimum allocation calculation required by §72-24 therein. The SCRP development must also 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] Tidal Waters or Tidal Wetlands by § 115-193.

(5) [There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the perimeter buffers and perimeter buffer protection areas (if Perimeter Buffer Protection Areas are required) set forth in §99-21.A. This setback may include walking and biking trails.] There shall be a setback around the entire site as follows:

50 feet from any boundary adjoining a residential district and from all state road rights of way. This setback shall incorporate perimeter buffers and perimeter buffer protection areas (if required) set forth in 99-21A.

10 feet from any boundary adjoining a commercial, business, marine, institutional or industrial district. Perimeter buffers and perimeter buffer protection areas shall not be required.

(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 100 feet to 50 feet.] *The height of any buildings shall not exceed 60 feet, provided, however, that if the height exceeds 42 feet and the site is adjacent to a residential district, the building(s) shall include a stepback design above 42 feet and/or an increased setback to ensure an appropriate relationship between the higher density SCRP project and uses of low intensity or height, existing or future, outside the proposed SCRP project. The linear dimensional requirements, including length and building separation, contained in §115-188D.(6) and E.(1) and (2) shall not apply.*

(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 wherever appropriate as determined by the Commission.

(9) There shall be open space that exceeds **[50]**30% 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 4. The Code of Sussex County, Chapter 115, Article VI, §115-37 “Permitted Uses”, is hereby amended by deleting the language in brackets and inserting the italicized and underlined language 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] A Sussex County Rental Program, or SCRP development governed by, and subject to, Chapter 72, where there are SCRP units provided in accordance with minimum allocation calculation required by §72-24 therein. The SCRP development must also 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] Tidal Waters or Tidal Wetlands** by § 115-193.

(5) **[There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the perimeter buffers and perimeter buffer protection areas (if Perimeter Buffer Protection Areas are required) set forth in §99-21.A. This setback may include walking and biking trails.]** *There shall be a setback around the entire site as follows:*

50 feet from any boundary adjoining a residential district and from all state road rights of way. This setback shall incorporate perimeter buffers and perimeter buffer protection areas (if required) set forth in 99-21A.

10 feet from any boundary adjoining a commercial, business, marine, institutional or industrial district. Perimeter buffers and perimeter buffer protection areas shall not be required.

(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 100 feet to 50 feet.]** *The height of any buildings shall not exceed 60 feet, provided, however, that if the height exceeds 42 feet and the site is adjacent to a residential district, the building(s) shall include a stepback design above 42 feet and/or an increased setback to ensure an appropriate relationship between the higher density SCRP project and uses of low intensity or height, existing or future, outside the*

proposed SCRP project. The linear dimensional requirements, including length and building separation, contained in §115-188D.(6) and E.(1) and (2) shall not apply.

(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 wherever appropriate as determined by the Commission.

(9) There shall be open space that exceeds [50] 30% 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 VII, §115-45 “Permitted Uses”, is hereby amended by deleting the language in brackets and inserting the italicized and underlined language as follows:

§115-45 Permitted Uses.

Permitted uses are as follows:

...

F. [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 Sussex County Rental Program, or SCRP development governed by, and subject to, Chapter 72, where there are SCRP units provided in accordance with minimum allocation calculation required by §72-24 therein. The SCRP development must also 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]** Tidal Waters or Tidal Wetlands by § 115-193.

(5) **[There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the perimeter buffers and perimeter buffer protection areas (if Perimeter Buffer Protection Areas are required) set forth in §99-21.A. This setback may include walking and biking trails.]** *There shall be a setback around the entire site as follows:*

50 feet from any boundary adjoining a residential district and from all state road rights of way. This setback shall incorporate perimeter buffers and perimeter buffer protection areas (if required) set forth in 99-21A.

10 feet from any boundary adjoining a commercial, business, marine, institutional or industrial district. Perimeter buffers and perimeter buffer protection areas shall not be required.

(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 100 feet to 50 feet.]** *The height of any buildings shall not exceed 60 feet, provided, however, that if the height exceeds 42 feet and the site is adjacent to a residential district, the building(s) shall include a stepback design above 42 feet and/or an increased setback to ensure an appropriate relationship between the higher density SCRP project and uses of low intensity or height, existing or future, outside the proposed SCRP project. The linear dimensional requirements, including length and building separation, contained in §115-188D.(6) and E.(1) and (2) shall not apply.*

(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 wherever appropriate as determined by the Commission.

(9) There shall be open space that exceeds **[50]** 30% 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 6. The Code of Sussex County, Chapter 115, Article VIII, §115-53 "Permitted Uses", is hereby amended by deleting the language in brackets and inserting the italicized and underlined language 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] A Sussex County Rental Program, or SCRP development governed by, and subject to, Chapter 72, where there are SCRP units provided in accordance with minimum allocation calculation required by §72-24 therein. The SCRP development must also 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] Tidal Waters or Tidal Wetlands** by § 115-193.
- (5) **[There shall be a one-hundred foot wide setback around the entire site, which shall incorporate the perimeter buffers and perimeter buffer protection areas (if Perimeter Buffer Protection Areas are required) set forth in §99-21.A. This setback may include walking and biking trails.] *There shall be a setback around the entire site as follows:***

50 feet from any boundary adjoining a residential district and from all state road rights of way. This setback shall incorporate perimeter buffers and perimeter buffer protection areas (if required) set forth in 99-21A.

10 feet from any boundary adjoining a commercial, business, marine, institutional or industrial district. Perimeter buffers and perimeter buffer protection areas shall not be required.

(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 100 feet to 50 feet.] *The height of any buildings shall not exceed 60 feet, provided, however, that if the height exceeds 42 feet and the site is adjacent to a residential district, the building(s) shall include a stepback design above 42 feet and/or an increased setback to ensure an appropriate relationship between the higher density SCRP project and uses of low intensity or height, existing or future, outside the proposed SCRP project. The linear dimensional requirements, including length and building separation, contained in §115-188D.(6) and E.(1) and (2) shall not apply.*

(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.

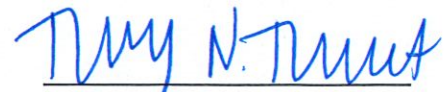
(8) There must be interconnectivity with any adjacent property that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3 wherever appropriate as determined by the Commission.

(9) There shall be open space that exceeds [50] 30% 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 7. Effective Date. This Ordinance shall become effective on the date of its adoption by Sussex County Council.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 4060 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 9TH DAY OF JUNE 2026.


Tracy N. Torbert
Clerk of the Council