

1 **AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY,**
2 **CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28**
3 **AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII**
4 **SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45,**
5 **115-50, 115-53 AND 115-58 REGARDING AFFORDABLY PRICED**
6 **RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT**
7 **(SCRIP) PROGRAM.**

8
9 WHEREAS, Sussex County Council has adopted the 2018
10 Comprehensive Development Plan (the “Plan”); and

11
12 WHEREAS, The Housing Element of the Plan contains the following
13 “Housing Vision”: To ensure the provision of decent, safe, affordable and
14 safe housing opportunities to improve communities and quality of life for
15 the residents of Sussex County; and

16
17 WHEREAS, The Housing Element of the Plan recognizes that an influx
18 of new residents in Sussex County has fueled prosperity in the County’s
19 real estate market, hospitality industry, and related economic sectors, yet
20 most housing, particularly on the eastern side of the County, is new and
21 often unaffordable to low-income families, seasonal employees, entry-
22 level workers, or recent college graduates; and

23
24 WHEREAS, The Housing Element of the Plan recognizes that “the
25 shortage of affordable housing remains a very real problem for low to
26 moderate-income households in Sussex County, including many with
27 full-time, year-round jobs; and

28
29 WHEREAS, Goal 8.2 of the Housing Element within the Plan states that
30 Sussex County should “Ensure that a diversity of housing opportunities
31 are available to meet the needs of residents of different ages, income
32 levels, abilities, national origins and household configurations”; and

33
34 WHEREAS, Objective 8.2.1 and Strategy 8.2.1.1 of the Housing Element
35 within the Plan states that Sussex County will “Affirmatively further
36 affordable and fair housing opportunities in the County to accommodate
37 the needs of all residents” and in so doing “improve the County’s SCRIP
38 and MPHU Programs to provide incentives to properly reflect the housing
39 market and incentivize developers to participate in the provision of
40 affordable housing”; and

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

46 WHEREAS, Objective 8.2.3 and Strategies 8.2.3.1, 8.2.3.2 and 8.2.3.6 of
47 the Housing Element within the Plan state that Sussex County should
48 “facilitate and promote land use policies that enable an increase in the
49 supply of affordable housing in areas with adequate infrastructure” by
50 “increasing affordable housing options, including the supply of rental
51 units, near employment opportunities”; by reviewing “County code to
52 determine if there are regulatory barriers to development of affordable
53 housing”; and by “revisiting [the] zoning code to determine in districts
54 where multifamily housing is currently a conditional use, if it should be
55 made a permitted use if water and sewer are already present and available
56 on the site”; and

57
58 WHEREAS, Strategy 8.3.1.1. of the Housing Element within the Plan
59 states that Sussex County should “evaluate current County code on an on-
60 going basis to determine if any regulatory barriers exist that impede the
61 development of multi-family and affordable housing”; and

62
63 WHEREAS, this Ordinance is in furtherance of these Goals, Objectives
64 and Strategies as set forth in the of the Housing Element within the Plan;
65 and

66
67 WHEREAS, Sussex County Council commissioned a study of Housing
68 Opportunities and Market Evaluation to evaluate and recommend
69 strategies and policies designed to promote housing choice and economic
70 vitality for Sussex County’s residents and workforce; and

71
72 WHEREAS, in November of 2019, LSA, the housing consultant retained
73 by Sussex County Council, issued its Final Report on “Housing
74 Opportunities and Market Evaluation” following an eight-month
75 initiative that included input from residents, homebuilders, developers,
76 housing advocates, County staff, County Council and Planning
77 Commissioners (“the LSA Report”); and

78
79 WHEREAS, one of the primary Strategy Recommendations included in
80 the LSA Report was a recommendation to “Modify the Zoning Code to
81 promote housing affordability in the Growth Areas identified in the
82 Comprehensive Plan, including the allowance for a maximum density of
83 12 units per acre “by-right” where affordable housing units are provided;
84 and

85
86 WHEREAS, this Ordinance carries out the Goals, Objectives and
87 Strategies of the Sussex County Comprehensive Plan and the LSA
88 Report; and

89

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

96
97 WHEREAS, Sussex County Council, with the assistance of the Office of
98 Community Development and Housing, has determined that the current
99 Sussex County Rental Unit program contained in Chapter 72 of the Code
100 of Sussex County should be revised to attract more affordable housing
101 developments within Sussex County; and

102
103 WHEREAS, it has been determined that this Ordinance promotes and
104 protects the health, safety, convenience, orderly growth and welfare of
105 the inhabitants of Sussex County.

106
107 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY**
108 **ORDAINS:**

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110 **Section 1. The Code of Sussex County, Chapter 72, Article II, §72-16**
111 **through 72-28 is hereby amended by deleting the language in**
112 **brackets and inserting the italicized and underlined language as**
113 **follows:**

114
115 **§ 72-16 Intent.**
116
117 This chapter seeks to better protect the health, safety and welfare of
118 Sussex County's residents and workforce by stimulating the provision of
119 affordable rental housing for residents with low and moderate incomes
120 and is hereafter known as the "Sussex County Rental Program" or
121 "SCRIP" or "program."

122
123 **§ 72-17 Governmental findings.**

124
125 The Sussex County Council hereby finds that a shortage exists within the
126 County for housing for residents with low and moderate incomes.
127 Specifically, the Council finds that:

- 128
129 A. It is well known that Sussex County rents have inflated far beyond
130 the ability of an average wage earner to pay. It is also known that
131 federal rental assistance programs, such as the state-administered
132 Public Housing and Section 8 Housing Choice Voucher
133 Programs, are unable to completely satisfy the need for affordable
134 rental housing.

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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:

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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 SCRP 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.]

223 [CONTROL PERIOD
224 The time a SCRP unit is subject to rental controls and occupancy
225 requirements. The control period is 30 years and begins on the date
226 of lease (defined below).]
227

228 DATE OF LEASE
229 The date of the initial lease agreement signing of an approved
230 [e]Eligible [t]Tenant for a SCRP [u]Unit.
231

232 DENSITY INCENTIVE
233 [Any increase in density pursuant to § 72-21 that allows a residential
234 development to achieve a density greater than would have been
235 possible under the applicable provisions of current and future zoning
236 ordinances and the County subdivision regulations then in effect.]
237 The density permitted by §72-21 and as a permitted use for SCRP
238 projects in Chapter 115.
239

240 DEPARTMENT
241 The Sussex County Department of Community Development and
242 Housing or its successors.
243

244 DEPARTMENT-DESIGNATED ENTITY (DDE)
245 Any agency, authority or political subdivision of the State of
246 Delaware or any other public housing development agency or
247 nonprofit housing corporation, land trust or similar entity designated
248 by the Department and approved by the County Administrator.
249

250 DIRECTOR
251 The head of the Department of Community Development and
252 Housing or head of a DDE, as applicable.
253

254 DWELLING
255 Any building, structure, or portion thereof which is occupied as, or
256 designed or intended for occupancy as, a residence; and any vacant
257 land which is offered for sale or lease for the construction or location
258 thereon of any such building, structure, or portion thereof.
259 "Dwelling" shall not include hotels, motels, motor lodges, boarding
260 and lodging houses, tourist houses, or similar structures.
261

262 ELIGIBLE INCOME
263 The levels of income designated by the County Administrator which
264 prohibit or severely limit the financial ability of persons to rent a
265 dwelling unit in Sussex County. Eligible [i]Income is low- to
266 moderate-income, defined as 30% to 80% of the area median
267 income for Sussex County adjusted for household size as defined by
268 the U.S. Department of Housing and Urban Development (HUD).

269 Income includes gross salary, wages, dividends, interest and all
270 other sources recognized by HUD from the [e]Eligible [t]Tenant and
271 all other adults (age 18 and older) who will occupy the SCRP
272 [u]Unit. Income will be verified by a copy of the filed income tax
273 returns from the previous year and any other personal and financial
274 information requested by the [l]Landlord in order to accurately
275 verify the potential tenant's qualifications and income, which may
276 include, but is not limited to, a credit history report and a criminal
277 background report on the proposed adult tenants, so long as these
278 are requirements for all leases in the housing development.

279

280 ELIGIBLE TENANT

281 Person(s):

282 A. Whose household *income is within the Eligible Income [is of low or*
283 *moderate income;]*.

284 [*B. Who has been found eligible to participate in the Sussex County*
285 *Rental Program; and*

286 *C. Who holds a valid certificate of eligibility from the landlord.]*

287

288 EXPEDITED REVIEW

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

304

305 FORECLOSURE EVENT

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

310

311 LANDLORD

312 The owner of the property that contains SCRP [u]Units or an entity
313 designated by the owner to manage and lease dwelling units.

314

315 QUALIFYING LAND

316 All land that:

317 A. Is owned by or under contract to the [a]Applicant; and

318 B. [Is located within a Growth Area as defined within the County's most
319 current comprehensive plan or within an Area of Opportunity as
320 defined by the Delaware State Housing Authority; and] Allows the
321 SCRP Units as a Permitted Use pursuant to Chapter 115.

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

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

325 E. Is at one location as defined above.]

326

327 SUSSEX COUNTY RENTAL PROGRAM UNIT (SCRP UNIT)

328 A dwelling which is:

329 A. Offered for lease to [e]Eligible [t]Tenants through or pursuant to the
330 provisions of this article and any regulations promulgated
331 thereunder by the Department and approved by the County
332 Administrator; or

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

336

337 § 72-20 Minimum standards of eligibility for tenants.

338

339 A. Eligible [t]Tenants must:

340

341 (1) Have proof of citizenship.

342

343 (2) Be of [e]Eligible [i]Income, as defined in § 72-19 above,
344 and be able to pay the first month's rent and any required
345 security deposit.

346

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

352

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

357
358 (5) Occupy the SCRP [u]Unit as the tenant's principal residence
359 during the lease period. Each [e]Eligible [t]Tenant must
360 certify before taking occupancy that the tenant will occupy
361 the SCRP [u]Unit as the tenant's principal residence. Any
362 tenant who violates occupancy requirements will be subject
363 to eviction procedures.

364
365 B. Where necessary or advisable to achieve the objectives of this
366 chapter or to comply with state or federal housing laws, the
367 Department may propose changes to these standards for approval
368 by the County, including changes to eligibility requirements for
369 tenants as recommended by the Department.

370
371 **§ 72-21 Density and expedited review incentives.**

372
373 A. Density incentive. [Subject to meeting the requirements outlined
374 in § 72-22, a proposed development on qualifying land at one
375 location may receive a density bonus of 20%. The project entering
376 the SCRP with the execution of a SCRP [a]Agreement will be
377 allowed to utilize the density permitted by the zoning district in
378 which the property is located, provided that the total density,
379 including any SCRP density bonus, shall not exceed 12 units per
380 acre.] See Permitted Uses in Chapter 115.

381
382 B. Expedited review. A project entering the SCRP through execution
383 of an SCRP [a]Agreement will receive expedited review, as
384 defined in § 72-19 above, through the County's Planning and
385 Zoning process.

386
387 C. Incentives will only be granted to projects submitted for new
388 development that meet all requirements of this program.

389
390 [D. To the extent necessary, Council shall amend the provisions of
391 the County's Zoning Ordinances as needed to achieve the density
392 incentives and the specific design elements (e.g., minimum lot
393 sizes, setbacks, building heights, parking requirements, etc.) of
394 approved SCRP projects.]

395
396 **§ 72-22 Minimum standards of eligibility for SCRP developments.**

398 [A. Applicants must contribute 12.5% of all units to SCRP inventory.
399 In applying and calculating the number of affordable units within
400 a proposed development, any decimal fraction less than or equal
401 to 0.50 may be disregarded, and any decimal fraction greater than
402 0.50 shall be constructed as one unit. In the case where the total
403 number of units being constructed is four or less, the minimum
404 number of SCRP units must be one unit.

405
406 B.] A. All parcels in the proposed project must be on qualifying land,
407 as defined in § 72-19.

408
409 [C]B. All units contributed as SCRP [u]Units will remain at the
410 affordable rental rates specified herein [for the remainder of the
411 control period]. SCRP [u]Units shall never be leased as market-
412 rate units [during the control period], regardless of vacancy,
413 except in accordance with § 72-23N(1).

414
415 D. SCRP [u]Units must be fully integrated into the communities of
416 which they are a part and shall not be substantially different in
417 external appearance from market-rate units. SCRP [u]Units shall
418 be equipped with the same basic appliances as the market rate
419 units, such as an oven, refrigerator, dishwasher, and washer and
420 dryer.

421 § 72-23 SCRP Agreements.

422 To participate in the SCRP and secure any incentives provided for
423 herein, an [a]Applicant must execute an SCRP [a]Agreement
424 prepared by the Department and the County Attorney. Each
425 agreement must include, at a minimum, the following information
426 and/or evidence the following agreements and any others deemed
427 necessary by the Department and the County Attorney to properly
428 implement the chapter:
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430
431
432 A. The specific number of SCRP [u]Units to be constructed in the
433 project. If a final site plan has not been approved when the SCRP
434 [a]Agreement is executed, an amendment to the SCRP
435 [a]Agreement will be made to incorporate the approved final site
436 plan.

437
438 B. [The schedule pursuant to which the SCRP units will be
439 constructed, marketed, and delivered and explaining the
440 relationship between the delivery of market-rate units and the
441 delivery of SCRP units (i.e., a stated number of SCRP units to be
442 created for each market-rate unit created).] A description of how
443 the SCRP Units will be marketed and delivered. The SCRP Units

444 must be constructed and delivered in equal proportion to non-
445 SCRP Units within the development.

446
447 (1) Applicants [should] shall affirmatively market the SCRП
448 [U]Units to diverse populations, and meet with the
449 surrounding residents early in the development approval
450 process.

451
452 C. Any economic risk created by changes, whether within or outside
453 of the [a]Applicant's control, in development and construction
454 costs, interest rates, processing and construction schedules,
455 permitting and any other factor impacting the [a]Applicant's costs
456 and development obligations are borne solely by the [a]Applicant.

457
458 D. Building permits, performance bonds and letters of credit.

459
460 [(1)] No building permits shall be issued in any subdivision or
461 housing development where SCRП [u]Units are included until
462 the [a]Applicant executes a valid SCRП [a]Agreement which
463 applies to the entire subdivision.

464
465 [(2)] If an applicant does not build the SCRП units in accordance
466 with the construction schedule along with or before other
467 dwelling units the County Administrator may withhold
468 building permits or call in performance bond or letter of credit
469 from the applicant until the SCRП units contained in the
470 construction schedule are built and contributed to SCRП rental
471 inventory to the satisfaction of the Department.]

472
473 E. Be signed by the [a]Applicant and all other parties having an
474 interest in the property whose signatures are required for the
475 effective and binding execution of contracts conveying real
476 property. SCRП [a]Agreements must be executed in a manner that
477 will enable them to be recorded in the land records of the County.
478 [If the applicant is a corporation or limited liability company, the
479 principal officers of the entity must sign the agreements
480 individually and on behalf of the corporation pursuant to a duly
481 adopted resolution.]

482
483 F. Partnerships, associations, corporations and other entities may not
484 evade the requirements of the SCRП [a]Agreement through
485 voluntary dissolution, bankruptcy, or the sale or transfer of
486 qualifying land.

487
488 G. The SCRП [a]Agreement may only be assigned with the prior
489 written approval of the Department and only if the proposed

490 assignee demonstrates the financial ability to fulfill all of the
491 [a]Applicant's obligations under the SCRП [a]Agreement.

492
493 H. Landlords are responsible for marketing, leasing, and determining
494 tenant eligibility for the SCRП [u]Units. [A lease agreement shall
495 not be signed unless validated by a certificate of eligibility.] A
496 landlord shall not be permitted to refuse to rent a unit to an
497 [e]Eligible [t]Tenant *[without providing the Department with just*
498 *cause, to the Department's satisfaction, for the refusal]. The*
499 *reasons for a refusal to rent to an Eligible Tenant shall be*
500 *documented and included in the Annual Audit and Certification*
501 *required by §72-28*

502
503 I. If the [a]Applicant is not also the builder, the relationship between
504 the [a]Applicant and the builder shall be fully disclosed to the
505 Department's satisfaction, as soon as the relationship is
506 established.

507
508 J. SCRП [u]Units must be fully integrated into the communities of
509 which they are a part (not separated geographically from the
510 market rate units and not grouped together) and shall not be
511 substantially different in external appearance from non-SCRП
512 [u]Units. When the SCRП [u]Units are a part of a phased
513 development, a proportionate number or percentage of said
514 [u]Units will be placed within each phase and/or constructed
515 within each housing type appearing in the development. The
516 planning and design of individual SCRП [u]Units must be
517 consistent with the planning and design of *non-SCRП Units (i.e.*
518 *market-rate units)* within a single project.

519
520 (1) The ratio of SCRП [u]Units by type must reflect the ratio by
521 type of market rate units, to the extent feasible. For instance,
522 if a development has 200 two-bedroom dwelling units and
523 100 one-bedroom dwelling units, the ratio of two-bedroom to
524 one-bedroom SCRП [u]Units should also be 2:1.

525
526 K. *[The applicant will execute and record covenants confirming*
527 *that]The SCRП Agreement shall be recorded in the Office of the*
528 *Recorder of Deeds confirming that:*

529
530 (1) The covenants *contained within it* will bind the [a]Applicant,
531 any assignee, mortgagee, or buyer and all other parties that
532 receive title to the property. In the event the mortgagee
533 acquires the property through a foreclosure or acceptance of
534 deed-in-lieu of foreclosure, the SCRП [a]Agreement

535 covenants will continue in effect. The covenants must be
536 senior to all instruments securing financing.

537
538 (2) In any deed or instrument conveying title by the [a]Applicant,
539 the property shall remain subject to all of the terms and
540 conditions contained in the SCRPs [a]Agreements by the
541 [a]Applicant required under the chapter [during the control
542 period]. The source of the SCRPs [a]Agreements and any deed
543 restrictions related thereto must be included in the public land
544 records so that they are readily identifiable in a routine title
545 search.

546
547 L. Where the [a]Applicant is a DDE, agreements will be negotiated
548 between the Department and the DDE so as to be consistent with
549 the mission, strategies, business plans and operating procedures
550 of the DDE and may, with Council approval, deviate from the
551 requirements of this chapter.

552
553 M. The SCRPs [a]Agreement requires that the [l]Landlord ensure that
554 the SCRPs [u]Units are occupied only by tenants whose [monthly]
555 *annual* income levels do not exceed the eligible income limit, and
556 shall prohibit tenants from subletting or subleasing the [u]Units.
557 [The agreement shall also require the landlord to submit a copy of
558 the initial and all renewal leases to the Director within 30 days of
559 signing the lease.]

560
561 (1) In addition, the [l]Landlord must supply the information listed
562 below in a format acceptable to the Director on an annual
563 basis:

564
565 (a) The number of SCRPs [u]Units, by bedroom count, that are
566 leased to [e]Eligible [t]Tenants and those that are vacant,
567 and the monthly rent charged for each SCRPs [u]Unit;

568
569 (b) For each SCRPs [u]Unit, the tenant's name, household size,
570 and total household income as of the date of the lease, and
571 the effective date of the lease;

572
573 (c) A statement that, to the best of the [l]Landlord's
574 information and knowledge, tenants who are leasing the
575 SCRPs [u]Units meet the eligibility criteria[; and

576
577 (d) A copy of each new or revised certificate of eligibility
578 obtained since the last annual report].

579

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

583

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

590

591 (1) Notwithstanding the provisions of § 72-23N above, if the
592 [a]Applicant immediately designates an additional
593 comparable unit as an affordable dwelling unit to be leased
594 under the controlled rental price and requirements of the
595 SCRP program, the tenant of such SCRP [u]Unit referenced
596 in § 72-23N above may continue to lease such [u]Unit at the
597 market value rent.

598

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

601

602 **§ 72-24 SCRP [u]Units.**

603

604 A. Rent.

605

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

611

612 (2) The [e]Eligible [t]Tenant must provide to the [l]Landlord income
613 tax returns (and proof of payment of any taxes owed) from the
614 previous year for all members of the household who were
615 required to file such returns. If an [e]Eligible [t]Tenant was not
616 required to file tax returns or if the [l]Landlord believes that
617 information from the previous tax returns is insufficient to
618 determine income, the [l]Landlord is authorized to request such
619 information as it deems necessary to confirm the income levels
620 of the proposed tenants.

621

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

624

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
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625 **§ 72-25 Leasing of SCRP [u]Units.**

626

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

628

629 (1) Every SCRP [u]Unit constructed under this program must
630 be offered to all [e]Eligible [t]Tenants for lease as the
631 [e]Eligible [t]Tenant's principal residence. Notification to
632 the public of SCRP [u]Unit availability will be made by the
633 [l]Landlord and is recommended to be made by advertising
634 on DelawareHousingSearch.org *and similar sites*. The
635 Department may, but is not obligated to, provide notice of
636 SCRP [u]Unit availability through the Department's
637 website.

638

639 (2) The [l]Landlord will determine SCRP tenant eligibility
640 under § 72-20[, *and lease agreements shall not be signed*
641 *until the tenant has received a certificate of eligibility from*
642 *the landlord*].

643

644 (3) Annually, the Department will provide updated income
645 guidelines and rental rates to the [l]Landlord for use in
646 leasing the SCRP [u]Units.

647

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

652

653 (5) All lease agreements of SCRP [u]Units shall cover a period
654 of one year.

655

656 (6) An [e]Eligible [t]Tenant already occupying a SCRP [u]Unit
657 *[has]shall have a* first-option to renew the lease agreement
658 each year, as long as the tenant maintains good standing

659 with the [l]Landlord and continues to qualify as an
660 [e]Eligible [t]Tenant. [The Department shall be notified by
661 the landlord of the intent to evict and the reasons therefor at
662 the same time the landlord first provides notice to the
663 tenant.]

664
665 B. Tenants of SCRPs [u]Units shall provide an executed affidavit on
666 an annual basis certifying their continuing occupancy of the unit
667 as their principal residence. Tenants shall provide such affidavit
668 to the [l]Landlord by the date that may be specified in their lease
669 or that may otherwise be specified by the [l]Landlord.

670
671 C. In the event the tenant of an SCRPs [u]Unit fails to provide his or
672 her [l]Landlord with an executed affidavit as provided for in the
673 preceding paragraph within 30 days of written request for such
674 affidavit, then the lease shall automatically terminate, become
675 null and void and the occupant shall vacate the [u]Unit within 30
676 days of written notice from the [l]Landlord.

677
678 **§ 72-26 Foreclosure or default.**

679
680 A. The [l]Landlord must provide the Department with a copy of any
681 mortgage default notification immediately upon receipt and a written
682 explanation of how the default will be remedied.

683
684 B. If a foreclosure event occurs [during the control period], the covenants
685 endure through the transfer of property [until the end of the control
686 period].

687
688 [C. If the foreclosure event occurs after the thirty-year control period, then
689 all binding restrictions of this chapter will dissolve.]

690
691 **§ 72-27 Implementation.**

692
693 Improvements to concepts, processes and rules and regulations of the
694 SCRPs program will be incorporated into future amendments of this
695 article. Council views this article as a living document that will be
696 modified as needed to respond to economic, housing, development,
697 land use and other trends in the County and to best practices in
698 affordable rental programs.

699
700 **§72-28 Annual Audit and Certification.**

701
702 The Landlord shall contract with an independent Delaware Certified
703 Public Accountant that has no other relationship with the
704 Landlord/Developer/Owner/Manager to audit the Landlord's

705 Compliance with this Chapter 72, the conditions of approval for the
706 project, the terms of the SCRP Agreement, the rental of the SCRP
707 Units and the status of the Eligible Tenants (and their Eligible
708 Income) within the project. In this engagement, the Delaware
709 Certified Public Accountant will perform this obligation in
710 accordance with attestation standards established by the American
711 Institute of Certified Public Accountants. This annual audit and
712 report shall certify that the project remains in compliance with (i) all
713 of the Chapter 72 requirements and the terms of the SCRP Agreement;
714 (ii) the status of each of the SCRP Units (whether leased or vacant);
715 (iii) certification that each of the Eligible Tenants renting an SCRP
716 Unit within the project are an Eligible Tenant as of the date of the
717 annual audit and report; (iv) the status and duration of any vacancy
718 of any SCRP Unit; (v) the marketing efforts to re-let any vacant SCRP
719 Unit to an Eligible Tenant; (vi) the status of any list of Eligible
720 Tenants waiting for an SCRP Unit to come available; and (vii) such
721 other information as the Delaware Certified Public
722 Accountant and/or the Community Development and Housing Office
723 may deem appropriate and necessary. This annual audit and report
724 shall be submitted to both the Office of Planning & Zoning and the
725 Community Development & Housing Office no later than March 1 of
726 each year.

727
728 **§ 72-2[8]2 Government regulations; enforcement.**

- 729
- 730 A. The Department will maintain a list of all SCRP [u]Units
731 constructed and leased under this program, and the Council
732 hereby authorizes the County Administrator to promulgate and
733 adopt regulations and approve the various agreements/documents
734 necessary to administer this program.
- 735
- 736 B. The Director may, with Council approval, waive or modify the
737 provisions of the program if the Director finds the program in
738 conflict with state or federal housing laws.
- 739
- 740 C. This program applies to all agents, successors, and assigns of an
741 [a]Applicant. A building permit shall not be issued and a
742 preliminary plan of subdivision, development plan, or site plan
743 shall not be approved for a development that will contain
744 affordable rental units to be submitted to this program unless it
745 meets the requirements of this program. The County
746 Administrator may deny, suspend, or revoke any building or
747 occupancy permit upon finding a violation of this program. Any
748 prior approval of a preliminary or final plan of subdivision,
749 development plan or site plan may be suspended or revoked upon
750 the failure to meet any requirement of this chapter. An occupancy

751 permit shall not be issued for any building to any [a]Applicant, or
752 a successor, or assign of any [a]Applicant, for any construction
753 that does not comply with this program. The County
754 Administrator may also withhold or call in performance bond
755 funds, letters of credit, and certificates of compliance or
756 occupancy from the [a]Applicant for any violation of this
757 program.

758
759 *D. In the event that the Landlord rents any of the SCRP Units at non-*
760 *SCRP Unit rates (i.e. market rental rates) so that the*
761 *proportionate share of SCRP Units versus non-SCRP Units as*
762 *originally approved is not maintained, the Landlord of the project*
763 *shall be required to pay to Sussex County the monthly market rent*
764 *collected from any such SCRP Unit that is rented at a non-SCRP*
765 *Unit Rate. Any such funds collected by Sussex County shall be*
766 *used for housing purposes and administered by the Sussex County*
767 *Office of Community Development and Housing.*
768

769 D]E. The Director is authorized to pursue any available remedy, legal
770 or equitable in nature, to enforce the requirements of this program
771 or to prevent or abate a violation of this program.
772

773 [E]F. The Director may take legal action to stop or cancel any lease
774 of an SCRP [u]Unit if any party does not comply with all
775 requirements of this program. The Director may recover any
776 funds improperly obtained from the rental of a SCRP [u]Unit in
777 violation of this chapter.
778

779 [F]G. In the event of litigation to enforce the terms and conditions of
780 this chapter or any agreement or obligation under the SCRP
781 program, the Department shall be entitled to an award of legal
782 costs and fees to be collected from the party who is determined to
783 be in violation of such agreements and obligations.
784
785

786 **Section 2. The Code of Sussex County, Chapter 115, Article IV, §115-**
787 **20 “Permitted Uses”, is hereby amended by inserting the italicized**
788 **and underlined language as a new subpart A.(17) thereof as follows:**
789

790 **§115-20 Permitted Uses.**
791

792 A. A building or land shall be used only for the following purposes:
793

794 . . .
795

796 (17) A Sussex County Rental Program, or SCRP, townhouse or multi-
797 family development governed by, and subject to, Chapter 72,
798 where at least 30% of all dwelling units are SCRP Units pursuant
799 to Chapter 72. The SCRP development must satisfy the following
800 criteria:

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

805
806 (b) The site shall be located within 2,640 feet of an existing or
807 proposed DART Route operated by the Delaware Transit
808 Corporation. In the case of a proposed DART Route, Final Site
809 Plan approval shall not be granted until the Route is in existence
810 and operated by DART.

811
812 (c) The site must be served by a central sewer system and a central
813 water system.

814
815 (d) The total maximum number of dwelling units (including both
816 SCRP Units and non-SCRP Units) that may be permitted shall be
817 determined by dividing the gross area by 3,630 square feet.
818 "Gross area" shall exclude any area designated as a tidal
819 tributary stream or tidal wetlands by § 115-193.

820 (e) There shall be a one-hundred foot wide setback around the
821 entire site, which shall incorporate the "Forested and/or
822 Landscaped Buffer Strip" identified in Section 99-4. This setback
823 shall include walking and biking trails.

824 (f) The height of any townhouse or multi-family buildings shall
825 not exceed 52 feet or four stories, whichever is greater.

826 (g) There shall be sidewalks on all streets, roadways and parking
827 areas, with interconnectivity to adjacent walkway systems.

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

830 (i) There shall be open space that exceeds fifty percent of the
831 gross area of the entire site. The Primary view from each
832 dwelling unit shall be directed to open space and recreational
833 amenities.

834
835 **Section 3. The Code of Sussex County, Chapter 115, Article IV, §115-**
836 **25 "Height, Area and Bulk Requirements", is hereby amended by**

837 **inserting the italicized and underlined language as a new subpart G**
838 **thereof as follows:**

839

840 **§115-25 Height, Area and Bulk Requirements.**

841

842 . . .

843

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

849

850 **Section 4. The Code of Sussex County, Chapter 115, Article V, §115-**
851 **29 “Permitted Uses”, is hereby amended by inserting the italicized**
852 **and underlined language as a new subpart K. thereof as follows:**

853

854 **§115-29 Permitted Uses.**

855

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

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858 . . .

859

860 K. A Sussex County Rental Program, or SCRP, townhouse or multi-
861 family development governed by, and subject to, Chapter 72,
862 where at least 30% of all dwelling units are SCRP Units pursuant
863 to Chapter 72. The SCRP development must satisfy the following
864 criteria:

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

869

870 (2)The site shall be located within 2,640 feet of an existing or
871 proposed DART Route operated by the Delaware Transit
872 Corporation. In the case of a proposed DART Route, Final Site
873 Plan approval shall not be granted until the Route is in existence
874 and operated by DART.

875

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

878

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

884 (5)There shall be a one-hundred foot wide setback around the
885 entire site, which shall incorporate the “Forested and/or
886 Landscaped Buffer Strip” identified in Section 99-4. This setback
887 shall include walking and biking trails.

888 (6)The height of any townhouse or multi-family buildings shall
889 not exceed 52 feet or four stories, whichever is greater.

890 (7)There shall be sidewalks on all streets, roadways and parking
891 areas, with interconnectivity to adjacent walkway systems.

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

894 (9)There shall be open space that exceeds fifty percent of the
895 gross area of the entire site. The Primary view from each
896 dwelling unit shall be directed to open space and recreational
897 amenities.

898
899 **Section 5. The Code of Sussex County, Chapter 115, Article V, §115-**
900 **34 “Height, Area and Bulk Requirements”, is hereby amended by**
901 **inserting the italicized and underlined language as a new subpart D.**
902 **thereof as follows:**

903
904 **§115-34 Height, Area and Bulk Requirements.**

905
906 . . .

907
908 D. Sussex County Rental Unit development permitted by §115-29K. The
909 minimum lot size, lot area per dwelling unit, open space, height and
910 setback requirements for a Sussex County Rental Unit development
911 permitted by §115-29K shall be governed by the dimensional
912 requirements set forth in that Section.

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914

915 **Section 6. The Code of Sussex County, Chapter 115, Article VI, §115-**
916 **37 “Permitted Uses”, is hereby amended by inserting the italicized**
917 **and underlined language as a new subpart C. as follows:**

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919 **§115-37 Permitted Uses.**

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Permitted uses are as follows:

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C. A Sussex County Rental Program, or SCRP, townhouse or multi-family development governed by, and subject to, Chapter 72, where at least 30% 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, 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 an existing or proposed DART Route operated by the Delaware Transit Corporation. In the case of a proposed DART Route, Final Site Plan approval shall not be granted until the Route is in existence and operated by DART.

(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 99-4. This setback shall 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.

(7) There shall be sidewalks on all streets, roadways and parking areas, with interconnectivity to adjacent walkway systems.

(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. The Primary view from each dwelling unit shall be directed to open space and recreational amenities.

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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 SCRP, townhouse or multi-family development governed by, and subject to, Chapter 72, where at least 30% 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, 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 an existing or proposed DART Route operated by the Delaware Transit Corporation. In the case of a proposed DART Route, Final Site Plan approval shall not be granted until the Route is in existence and operated by DART.

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

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(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 99-4. This setback shall 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.

(7) There shall be sidewalks on all streets, roadways and parking areas, with interconnectivity to adjacent walkway systems.

(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. The Primary view from each dwelling unit shall be directed to open space and recreational amenities.

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.

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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 30% 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, 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 an existing or proposed DART Route operated by the Delaware Transit Corporation. In the case of a proposed DART Route, Final Site Plan approval shall not be granted until the Route is in existence and operated by DART.

(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 99-4. This setback shall 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.

(7) There shall be sidewalks on all streets, roadways and parking areas, with interconnectivity to adjacent walkway systems.

(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. The Primary view from each dwelling unit shall be directed to open space and recreational amenities.

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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.