ORDINANCE NO. 2016

AN ORDINANCE TO AMEND CHAPTER 72 OF THE CODE OF SUSSEX COUNTY RELATING TO MODERATELY PRICED HOUSING UNITS TO ESTABLISH AN AFFORDABLY PRICED RENTAL UNIT PROGRAM, as amended.

WHEREAS, on January 17, 2006, County Council adopted Ordinance No. 1821 to establish a moderately priced housing unit program; and

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

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

WHEREAS, Council believes that this Ordinance will address the rental housing shortage for residents with low and moderate incomes; and

WHEREAS, the program created by this Ordinance shall be known as the Sussex County Rental Program or "SCRP"; and

WHEREAS, any material to be added to Chapter 72 by this amendment will be underlined.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

§ 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.

§ 72-17. Governmental findings.

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

A. It is well known that Sussex County rents have inflated far beyond the ability of an average wage-earner to pay. It is also known that Federal rental assistance programs, such as the State-administered Public Housing and Section 8 Housing Choice Voucher Programs are unable to completely satisfy the need for affordable rental housing. The waiting list for Kent and Sussex Counties for affordable rental housing programs exceeds

5000 residents and the average waiting time for placement in one of these rental units is eighteen (18) months.

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

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

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

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

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

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

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

§72-18. Declaration of public policy.

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

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

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

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

D. Encourage developments in Town Centers, Developing Areas, Environmentally Sensitive Developing Areas, and land that lies in a town's growth and future annexation area with twenty-five (25) or more total dwelling units to include a minimum number of affordable rental units on public water and sewer systems.

E. Provide incentives for developers to construct affordable rental units through tools such as the Density Incentive and Expedited Review (defined below).

§ 72-19. Definitions.

The following words and phrases have the following meaning:

A. Applicant. Any person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities owning or controlling via contract Qualifying Land (defined below) and any transferee or successor in interest of all or part of the Qualifying Land that:

a. Submits to the County for approval or extension of approval a plan of housing development for any type of site plan review, subdivision plan or development approval (hereinafter, a "Site Plan") that provides for the development of at least twenty-five (25) dwelling units on Qualifying Land in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development that includes a specified minimum number of affordable rental units.

b. With respect to land in zones not subject to subdivision approval or site plan review, applies for building permits for the construction of twenty-five (25) or more dwelling units on Qualifying Land.

B. Area Median Income. The midpoint family income for a non-metropolitan county, calculated each year by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size.

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

a. The property lines are contiguous; and/or

b. The property lines are separated only by a public or private right-of-way at any point; and/or

c. The property lines are separated only by other land of the Applicant not subject to this Section at the time of the submission of an application or Development Plan by the Applicant.

D. Certificate of Eligibility. A certificate valid for a specified period of time, which is issued by the Department (defined below) to Eligible Tenants that places them on an eligibility list for SCRP units maintained by the Department. This certificate must be issued before a tenant will be permitted to sign a lease agreement.

E. Control Period. The time a SCRP unit is subject to rental controls and occupancy requirements. The Control Period is thirty (30) years, and begins on the Date of Lease (defined below).

F. Date of Lease. The date of the initial lease agreement signing of an approved Eligible Tenant for a SCRP unit.

G. Density Incentive. Any increase in density pursuant to Section 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.

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

I. 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.

J. Director. The head of the Department of Community Development & Housing or head of a DDE, as applicable.

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

L. Eligible Income. The levels of income designated by the County Administrator, which prohibit, or severely limit, the financial ability of persons to rent a dwelling unit in Sussex County. Eligible Income is low to moderate income defined as thirty to eighty percent (30% to 80%) of Area Median Income for Sussex County adjusted for household size as defined by the U.S. Department of Housing and Urban Development (HUD).

Income includes gross salary, wages, dividends, interest and all other sources recognized by HUD from the Eligible Tenant and all other adults (age 18 and older) who will occupy the SCRP unit. Income will be verified by a copy of the filed income tax returns from the previous year and any other personal and financial information requested by the Department in order to accurately verify the applicant's qualifications and income, including but not limited to, credit history report and criminal background report on the proposed adult tenants.

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

M. Eligible Tenant. Person(s) (1) whose household is of low or moderate income, (2) who has been found eligible to participate in the Sussex County Rental Program, and (3) who hold a valid Certificate of Eligibility from the Department.

N. Expedited Review. A project entering the SCRP will receive priority in the County's Planning & Zoning process, with the Director of Planning and Zoning and the County Administrator to determine the Applicant's placement in the list of pending applications. The expedited review is provided to the Applicant to assist the Applicant in managing, to the extent possible, the risk of changes to cost, interest rates, schedule and other factors that the Applicant is taking on by virtue of participation in the SCRP. If an Applicant, at any time during processing, elects to withdraw from the SCRP, any approvals granted for the development through the date of withdrawal will be vacated and the Applicant will have to resubmit the project through the normal County process.

O. 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.

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

Q. Minimum Standards of Eligibility. The criteria required to obtain a Certificate of Eligibility as enumerated in Section 73-23 below.

R. Qualifying Land. All land:

a. Owned by or under contract to the Applicant; and

b. In a Town Center, Developing Area or Environmentally Sensitive Developing Area and zoned for any type of residential development to which a density provision applies; or land that is designated on a town's comprehensive plan as lying within the town's growth and future annexation area; and

c. Requires the submission and approval of a Site Plan or, where a Site Plan is not required, one or more building permit; and

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

e. Is At One Location as defined in C above.

S. Sussex County Rental Program Unit (SCRP unit). A dwelling unit which is:

a. Offered for lease to Eligible Tenants through or pursuant to regulations promulgated 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 eligible tenants.

Eligible Tenants must:

A. Have proof of citizenship.

B. Be of Eligible Income as defined in Section 72-19.L. above and be able to pay the first month's rent and any required security deposit.

C. Must be employed and live in Sussex County for at least one (1) year preceding application to the SCRP.

a. 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.

D. Provide proof that adult tenants have not been convicted of a felony and have a satisfactory credit and criminal history.

E. Must occupy the SCRP unit as the tenant's principal residence during the lease period. Each Eligible Tenant must certify before taking occupancy that the tenant will occupy the SCRP unit as tenant's principal residence. Any tenant who violates occupancy requirements will be subject to eviction procedures.

Where necessary or advisable to achieve the objectives of this Ordinance or to comply with state or federal housing laws, the Department may propose changes to these standards for approval by the County Administrator, 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 Section 72-22, a proposed development on Qualifying Land at One Location may receive a 20% density bonus. The project entering the SCRP with the execution of a SCRP Agreement will be allowed to utilize the density permitted by the zoning district in which the property is located, provided that the total density, including any SCRP density bonus, shall not exceed twelve (12) units per acre.

B. **Expedited Review.** A project entering the SCRP through execution of an SCRP Agreement will receive expedited review through the County's Planning & Zoning process as defined in Section 72-19.N, above.

Incentives will only be granted to projects submitting projects for new development that meet all requirements of this Program.

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

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

A. Applicants with proposals of twenty-five (25) to sixty-four (64) total units must contribute forty percent (40%) of all units to SCRP inventory. Applicants with sixty-five (65) or more units must contribute fifteen percent (15%) of all units to SCRP inventory with a minimum of 26 SCRP units.

    a. In applying and calculating the number of moderately priced 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.

B. All parcels in the proposed project must be on Qualifying Land, as defined in Section 72-19.R.

C. All units contributed as SCRP units will remain at the affordable rental rates specified herein for the remainder of the Control Period. SCRP units shall never be leased as market-rate units during the Control Period, regardless of vacancy.

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

§ 72-23. SCRP Agreements.

To participate in the SCRP and secure any incentives provided for herein, an Applicant must execute an SCRP 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 Ordinance:

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

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

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

D. (i) No building permits shall be issued in any subdivision or housing development where SCRP units are included until the Applicant executes a valid SCRP Agreement, which applies to the entire subdivision. (ii) If an Applicant does not build the SCRP units in accordance with the construction schedule along with or before other dwelling units, the County Administrator may withhold building permits, performance bond and letters of credit from the Applicant until the SCRP units contained in the construction schedule are built and contributed to SCRP rental inventory to the satisfaction of the Department.

E. Be signed by the Applicant and all other parties having an interest in the property whose signatures are required for the effective and binding execution of contracts conveying real property. SCRP 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 SCRP Agreement through voluntary dissolution, bankruptcy, or the sale or transfer of qualifying land.

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

H. Applicants are responsible for marketing and leasing the SCRP units. The Department will screen Eligible Tenants and issue a Certificate of Eligibility. Upon availability of a vacant SCRP unit, the Eligible Tenant will be sent to the Landlord to sign the lease agreement. A lease agreement shall not be signed unless validated by a Certificate of Eligibility. A Landlord shall not be permitted to refuse to rent a unit to an Eligible Tenant without providing the Department with just cause, to the Department's satisfaction, for the refusal.

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

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

K. Applicant will execute and record covenants confirming that:

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

b. In any deed or instrument conveying title by the Applicant, the property shall remain subject to all of the terms and conditions contained in the SCRP agreements by the Applicant required under the Ordinance during the Control Period. The source of the SCRP 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 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 Ordinance.

M. The SCRP Agreement requires that the Landlord ensure that the SCRP units are occupied only by tenants whose monthly income levels do not exceed the Eligible Income limit, and shall prohibit tenants from subletting or subleasing the units. The Agreement shall also require the Landlord to submit an annual report to the Director, which includes, but is not limited to: a listing of all affordable rental units within the project; the monthly rents charged; vacancy information for the prior year; and the household size and monthly income for tenants of each affordable unit throughout the prior year. The

Department shall audit the report and may require such additional information needed to evaluate and accept the annual report.

N. The Tenant must vacate the SCRP unit if the tenant's household income exceeds eighty percent (80%) of the Area Median Income by twenty percent (20%). The Applicant must take the necessary action to have the tenant vacate the SCRP unit within six (6) months of receiving information that the tenant's household income exceeds the Eligible Income limit.

§ 72-24. SCRP Units.

A. Rent

a. The SCRP unit rental price shall be determined on a case by case basis for each Eligible Tenant.

b. The Eligible Tenant must provide income tax returns (and proof of payment of any taxes owed) from the previous year for all members of the household who were required to file such returns. If an eligible Tenant was not required to file tax returns, the Department is authorized to request such information it deems necessary to confirm the income levels of the proposed tenants.

c. The SCRP unit rental rate shall be twenty-five percent (25%) of the total gross monthly income of the household. The rental rate shall include trash services, parking, water and sewer utilities and any other charges to be paid by the tenant.

B. Unit and Household Size

a. Households will be placed in units according to the following distribution:

Unit Size	***Household Size***
Efficiency	*One (1) to Two (2)*
One (1) Bedroom	*One (1) to Two (2)*
Two (2) Bedrooms	*Two (2) to Four (4)*
Three (3) Bedrooms	*Four (4) to Six (6)*
Four (4) Bedrooms	*Five (5) to Eight (8)*

§72-25. Leasing of SCRP Units.

A. Leases to Eligible Tenants

a. Every SCRP unit constructed under this Program must be offered to all Eligible Tenants for lease as the Eligible Tenant's principal residence. Notification of SCRP unit availability will be made through the Department's website and notices in area publications.

b. The Department will screen initial applications for SCRP units from the public to determine eligibility using Program guidelines and maintaining a waiting list of Eligible Tenants. The Landlord will communicate with the Department when a SCRP unit is available for lease. Lease agreements shall not be signed until the Tenant has received a Certificate of Eligibility from the Department.

c. Annually, the Department will submit updated income guidelines and rent formulas to the Landlord for use in establishing rental rates that comply with SCRP requirements.

d. Shall contain the same terms and conditions as the lease agreements with market-rate renters with the exception of the rental rates.

e. All lease agreements of SCRP units shall cover a period of one (1) year.

f. An Eligible Tenant already occupying a SCRP unit has first-option to renew the lease agreement each year, as long as the tenant maintains good standing with Landlord and continues to qualify as an Eligible Tenant. The Department shall be notified by Landlord of the intent to evict and the reasons therefor.

§ 72.26. Foreclosure or default.

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

If a Foreclosure Event occurs during the Control Period, the covenants endure through the transfer of property until the end of the control period.

If the Foreclosure Event occurs after the thirty (30) year control period, then all binding restrictions of this Ordinance will dissolve.

§ 72.27. Phased implementation of ordinance.

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

2. This section further establishes a Request for Proposal ("RFP") process to select Program participants. The RFP process will:

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

b. Allow the County to manage the number of potential SCRP units created until the actual market for SCRP units is better understood and quantified and until Program guidelines related to marketing and leasing are tested and finalized.

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

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

§ 72-28. Government regulations, enforcement.

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

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

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

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

E. The Director may take legal action to stop or cancel any lease of an SCRP 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 unit in violation of this Chapter.

F. In the event of litigation to enforce the terms and conditions of this Ordinance or any agreement or obligation under the SCRP program, it 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.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2016 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 9TH DAY OF DECEMBER 2008.

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ROBIN A. GRIFFITH
CLERK OF THE COUNCIL