AGENDA ITEM SUMMARY

REGULAR MEETING DATE: August 11, 2021

AGENDA ITEM TITLE: An Ordinance of the Board of County Commissioners Amending Sections 8-30-10, 8-30-20(a)(1) and 8-30-20(b)(1) of the Pitkin County Land Use Code, Implementing Changes for Calculating the Employee Housing Impact Fee – Second Reading

STAFF RESPONSIBLE: John M. Ely, County Attorney

SECOND READING: This is the second reading and public hearing of the attached ordinance to amend Sections 8-30-10, 8-30-20 (a)(1) and 8-30-20(b)(2). The original Agenda Item Summary from first reading is re-printed below. At first reading, the Board wished to see the effect on the impact fee from changing the area of residential sales data collection isolated from the effects of the other proposed Code amendments. Attachment 1, appearing after this AIS in the packet contains two charts. The first or upper chart, "2021 Pitkin County AMI at 100% ($85,200)" shows a comparison between the current fee and the fee changed to collect "All County Sales Data." This comparison appears with variable mitigation rates, the left two major columns and uniform mitigation rates, the right two major columns. Further, this chart shows that the Fee Subsidy Per Employee changes from $214,532 for unincorporated county sales data to $374,943 for all county sales data.

Additionally, the Impact Fee Calculation Chart, shown on page 5 of this AIS, illustrates the fee calculation under the present regulations using sales data from the unincorporated county and how that sales data results in a price per square foot for free market sales of $633. Attached to the end of this AIS is a supplemental calculation chart titled "Pitkin County Housing Fee per Employee-2021-Updated 6.4.21-Sales Data from Entire County." This chart illustrates the calculation change implementing <u>only</u> the adjustment in the area of sales data collection. The chart shows how the price per square foot for free market sales increases to $865 per square foot.

ISSUE STATEMENT: Pitkin County last amended the Employee Housing Impact Fee in February of 2020, BOCC Ord. 03-2020. The current impact fee amount is recalculated once a year based upon that adopted methodology. The revision of the fee is based upon updated data points which comprise some of the variables used to calculate the fee. The revision is timed to coincide with the release of United States Department of Housing and Urban Development (HUD) data pertaining to median annual income in Pitkin County. This annual revision also affords a chance to reassess the foundational assumptions that are also relied upon to calculate the impact fee.

The variables that are used to calculate the annual impact fee can be classified into two categories. The first category are those variables that change every year pursuant to the codified methodology. Variables such as the median income of households in Pitkin County, the median sales price of free market residential dwelling units and mortgage interest rates are examples of these annually changing variables. These values are reassessed every year and a new fee is calculated automatically. The second category are those variables that are static and cannot be changed without an amendment to the Code. Variables such as the size of a typical subsidized dwelling unit, the area from which free market sales data is collected, the percentage of mitigation required to be paid, and the percentage of the area median income for Pitkin County households that the County targets for housing are examples of static variables. This last example reflects the income earned by the theoretical household that the subsidy and therefore the fee is targeted to benefit.

BACKGROUND: Pitkin County has established an employee housing impact fee to mitigate the increased demand for housing caused by employment generation associated with approved development.

The ability of the County to charge a fee in order to create capital facilities needed to serve new development, or, in other words, to require development to "pay its own way," has been recognized by Federal and Colorado appellate courts. This principle is loosely described as the ability of government to charge mitigation for impacts that are rationally related to development activity and that are in proportion to the impacts of the development. In Colorado, the ability to collect impact fees was codified by the legislature in 2001. C.R.S § 29-20-104.5. The codification was seen as necessary because local governments were stretching the principles of rational relationship and rough proportionality to a point where exactions, the impact fees, were becoming unfair to property owners.

In Colorado, all impact fees, those imposed for housing, roads, water and sewer, parks, any impact fee or exaction at all, must conform to the same statutory requirements.

- Fees must be used to fund government expenditures for capital facilities needed to serve new development.

- Fees must be imposed pursuant to a legislatively adopted schedule

    - Fees must be applied to a broad class of properties
    - Fees must be designed to address the development's impact on capital facilities

- The impact on capital facilities must be reasonably quantified

    - The fee must be calculated to address development impact and not compensate for any existing deficiencies.

    - Capital facilities are generally:

        - Improvements related to services a government is authorized to provide
        - Improvements that have a useful life of at least five years
        - Required by the local government's charter or enacted ordinance or resolution

The County's employee housing impact fee has and will continue to collect fees to offset demand for employee housing caused by new development. The County will continue to use these fees to create additional dwelling units to be added to the employee housing inventory to be managed by our designee, APCHA, or the County itself. The amount of the fee has and will relate to the number of employees generated by new development and the cost to create subsidized housing for those employees.

<u>Market Affordability Gap Methodology</u>

Pitkin County's employee housing impact fee is an "affordability gap" calculation methodology. Our Code provisions have a relative ease of administration, are a straightforward and obvious calculation of data points, and have the ability to continually update the fee based upon easily obtained data.

Essentially, this methodology analyzes the area median income of Pitkin County as reported annually by HUD. This income level is then compared to the preceding three years of real estate sales transactions in Pitkin County from data maintained by the County Assessor's Office. Finally, the disparity, or gap, between what is affordable by someone earning the area median income and what is actually being bought and sold on the open market is determined and used to calculate the required monetary subsidy needed to house one employee, thereby establishing the impact fee. The calculus relates equally to housing stock produced for sale or rent.

<u>Level of Affordability</u>

The County's target for housing has been individuals earning 100% of the area median level of income. However, the County may reexamine this foundational assumption of the fee calculus based upon the reality that the County's efforts in employee housing are often for those people making less than the median level of income. For example, if the impact fee is based on housing people who only earn 80% of the area median income the focus the subsidy would be on a lower level of income and by necessity would increase the fee.

The average household in Pitkin County is 2.09 individuals. Therefore, the target median income is analyzed for a household of two. In Pitkin County, in 2021, the median annual income for a household of two is $85,200. HUD usually reports this value in the second quarter of each year.

Federal housing programs recommend that no more than 30% of gross income be spent on housing, regardless of the income amount. This figure is consistent with most lending institutions. Of this 30%, approximately 30% of the total is assumed to be needed for property insurance, taxes, assessments and mortgage insurance. This reduces the amount of gross income available for principal and interest, i.e. loan value. Therefore, based upon income and expenses the median amount available for loan payments in 2021 for a two-person household is $1634 per month.

Mortgage interest rates are determined by contacting local banks and institutional lenders for a fixed interest rate on a 30-year promissory note. Currently the interest rate is approximately 3.125%. One percentage point is added for an interest rate of 4.125%. This additional point of interest reflects the fact that many subsidized housing purchases are done by buyers without perfect credit.

One last calculation is done for the average down payment. Giving the status of wages and savings capacity, the down payment for subsidized housing is typically 5%. Therefore, the maximum buying power for a two-person household earning 100% the area median income today is for a dwelling selling for approximately $354,999.

Free-market Sales Data

This component of the analysis calculates the value, based on sales data, for a free-market unit at a size that would typically be subsidized for employees.

The first decision point is to identify a geographic area from which to take sales data. Currently, the Code mandates the use of all of unincorporated Pitkin County.

The next variable is age of sales data. The County focuses on three years of data to calculate a rolling median of free-market sales. This method produces the most accurate data while eliminating short-term volatility. The median, distinct from the average, discounts outlying high and low numbers to produce a true midpoint of a range.

Lastly, the types of sales data are discriminated. Sales involving unheated space, sales of restricted properties, fractional ownerships, mobile homes, mixed use commercial/residential structures, sales of properties with more than one residence and sales involving more than 5 acres of real property are excluded from the collected data. These types of sales reflect other issues of value than just a principal dwelling unit.

In 2021, the current method yielded a three-year rolling median of $633 per square foot of heated floor area based on free-market residential sales transactions in unincorporated Pitkin County.

The size of the subsidized employee units typically ranges between 800 and 1200 ft.^{2}. 1100 ft.^{2} is used to reflect a typical employee unit size. The average size of an employee unit should periodically be examined to maintain its accuracy. At a value of $633 per square foot, the value of a free-market residential sale translated at the typical size of an employee unit is $696,300 for an 1100 ft.^{2} unit.

Affordability Gap

The difference between the market price for an 1100 ft.^{2} residence, $696,300, and the amount a household of two earning 100% of the area median income can afford to purchase, ~$354,999, is the "affordability gap." To this amount is added an administration fee of 10%. Ten percent (10%) is an acceptable range for administrative costs but it is expected that Pitkin County's actual expenses may be greater as more accurate data is available.

Data maintained by APCHA shows that in one unit of employee housing there are an average of 1.75 employees. With the inclusion of the administrative fee, the complete calculation results in a required subsidy of $375,431 per unit or $214,532 per full-time employee. The subsidy is therefore the impact fee for the generation of one employee attributable to a level of approved development.

The Impact Fee Calculation Chart illustrates the above-described calculation. This form worksheet is prepared every year following release of HUD data.

The recalculated fee based upon current Code language increased the fee per generated employee from $200,840 for 2020 to $214,532 for 2021.

IMPACT FEE CALCULATION CHART

Pitkin County Housing Fee per Employee-2021-Updated 4.12.21		
A	2021 Household Income—100% AMI for two (2) person households	$85,200
B	Affordable monthly payment (30% of A)	$2,130
C	Affordable principal and interest **(C+D+E=B)**	$1634
D	HOA dues, property taxes, insurance (20% of payment)	$426
E	Private Mortgage Insurance (PMI) (.25% of Loan Amount)	$ 70
F	Mortgage interest rate (current rate plus 1%)	4.125%*
G	Maximum mortgage loan	$337,249
H	Maximum affordable home price with 5% down	$354,999
	Market Price-(3-year Average Median price/sq. ft. 2018-2020)	**Unincorporated Sales**
I	Median market price per SF of heated floor area)	$633
J	Average affordable unit size (sq. ft.)	1100
K	Market price per unit **(IxJ =K)**	$696,300
L	**10% Administrative Charge (10% of the gap) (K-Hx10%=L)**	$34,130
	Market-Affordability Gap/Fee	
M	Per affordable unit **(K+L-H=M)**	$375,431
N	Per employee (per unit gap/1.75 employees per unit)	$214,532

***source Alpine Bank Aspen 4.8.21: 3.125% (quote given by email, 750+ Credit Score, 1% added to going rate to account for potentially lower credit rating)**

Other Rates (with excellent credit) as of 4.5.21: Roaring Fork Realty: 3.29%; Zillow: 3.44%; Realtor.com: 3.21%; Nerdwallet.com: 4.125%; Credit Union of Colorado: 3.176%

Implementation and Collection of Impact Fee

There are two calculations utilized to produce the exact fee imposed for any site-specific development activity. The first is the cost to house one full-time employee, as described above. The second is the number of employees generated by the approved development. These figures are multiplied together to yield the site-specific fee to be paid at the time of issuance of a building or development permit.

There is no present indication that the employee generation calculation created by Clarion Associates and Dr. Nicholas is incorrect and there is no data to support changing it. It is recommended that the calculus for determining employee generation remain the same.

There exists within the Code an ability to request an independent fee calculation if the developer believes actual employee generation is less than what is calculated through the Code formulas.

Alternatives to cash payment of the impact fee are provided in the Code. These alternatives are construction of employee housing, acquisition and restriction of existing housing and dedication of land. Currently, the acceptance of any of these alternatives is at the BOCC's discretion.

Finally, the BOCC has determined that it has been in the best interests of the community to require the level of mitigation to be less than 100% and thereby reducing the required fee. This determination was based upon a number of factors including the status of the County's construction economy, the effect of the impact fee on the strength of that economy and degree to which the fee may impact construction activity, and the existing need for housing. Increasing the percentage of mitigation to 100% would change the fee amount.

Currently, the Code provides for mitigation rates for different types of development. Residential development is divided into local and non-local resident occupancy. All non-resident occupancy is mitigated at 100%. Local occupancy is divided by house size: up to 8000 sq/ft 60 % mitigation; 8001 to 11000 sq/ft 80% mitigation; and 11001 to 15000 sq/ft 100% mitigation. Chart A below reflects the change in residential rates from last year to this year with current mitigation rates for several representative house sizes. Chart B reflects the potential changes to residential impact fees if 100% mitigation was required across the board for these same representative sizes.

The Code requires only 60% mitigation for commercial, tourist and unclassified development. Unclassified development is development that is not within the other three categories.

CHART A

CURRENT & UPDATED CALCUATED FEE EXAMPLES 5751-8000 Mitigated at 60% 8001-11000 Mitigated at 80% 11001-15000 Mitigated at 100% *All* Non-Locally Occupied Mitigated at 100%				
House size	**Current 2020 Fee**		**Updated 2021 Fee**	
	Locally Occupied	**Second Home**	**Locally Occupied**	**Second Home**
5751 FT^2	$16,808	$107,691	$17,954	$115,033
8500 FT^2	$42,900	$249,927	$45,825	$266,966
10000 FT^2	$53,708	$324,125	$57,369	$346,216
15000 FT^2	$100,684	$486,187	$107,541	$519,299

CHART B

CURRENT & UPDATED CALCUATED FEE EXAMPLES				
House size	**Current 2020 Fee-** **Various Mitigation Levels** **5751-8000 Mitigated at 60%** **8001-11000 Mitigated at 80%** **11001-15000 Mitigated at 100%**		**Updated 2021 Fee-100%** **Mitigation Level**	
	Locally Occupied	**Second Home**	**Locally Occupied**	**Second Home**
5751 FT^2	$16,808	$107,691	$29,924	$115,033
8500 FT^2	$42,900	$249,927	$57,281	$266,966
10000 FT^2	$53,708	$324,125	$71,711	$346,216
15000 FT^2	$100,684	$486,187	$107,541	$519,299

<u>Analysis of Static Variables in the Impact fee Calculation</u>

<u>Rate of Required Mitigation</u>

Principal among these static variables is the rate of mitigation required for approved development. As noted above, there are four classes of development established in the Code in relation to the assessment of the impact fee: commercial, tourist, residential and unclassified. All employee generation except residential requires 60% mitigation. In other words if a development generates one new FTE and the cost to house that new FTE is $200,000, then the developer/property owner is only required to pay $120,000.

The unusual vigor currently being experienced in the construction and property development and management industries as well as the increased activity in the sales and rentals of residential and commercial properties hardly demonstrate a need to reduce the amount of mitigation required. It is the recommendation to change all mitigation requirements to 100% in order to require development to more truly pay its way in the realm of housing impacts.

Level of Income to be Considered

Another of the static variables which may also be adjusted through Code amendments relates to income level of the target class of employees. Currently, the data point used by the County is 100% of the AMI. 100% of AMI for a household of two in 2021 is $85,200. The current fee is calculated using income data for an employee household earning $85,200. This means that the fee calculation result works for a household of two earning this annual amount or more but not for a household earning less. If it were to decided that the target income should reflect lower income for a two person household the percentage of AMI could be reduced. The 80% income level for a two person household for 2021 is $68,160 per year, as opposed to $85,200 at 100%. This change would take the impact fee for one generated employee from $214,532 to $259,286 for 2021. Calculations comparing the 2020 fee levels to the 2021 fee based upon 80% AMI maintaining the variable mitigation rates are shown in Chart C. The comparison of 2020 fees to 2021 fees based on 80% AMI with 100% mitigation are shown in Chart D.

CHART C

CURRENT & UPDATED CALCUATED FEE EXAMPLES-VARIABLE MITIGATION LEVELS: 5751-8000 ft^2 Mitigated at 60% 8001-11000 ft^2 Mitigated at 80% 11001-15000 ft^2 Mitigated at 100% *All Non-Locally Occupied Mitigated at 100%*				
House size	**2020 Fee Calculated @ 100% AMI- Variable Mitigation:** **5751-8000 ft^2 Mitigated at 60%** **8001-11000 ft^2 Mitigated at 80%** **11001-15000 ft^2 Mitigated at 100%**		**Updated 2021 Fee Calculated @ 80% AMI- Variable Mitigation:** **5751-8000 ft^2 Mitigated at 60%** **8001-11000 ft^2 Mitigated at 80%** **11001-15000 ft^2 Mitigated at 100%**	
	Locally Occupied	**Second Home**	**Locally Occupied**	**Second Home**
5751 FT^2	$16,808	$107,691	$21,700	$139,030
8500 FT^2	$42,900	$249,927	$55,384	$322,658
10000 FT^2	$53,708	$324,125	$69,333	$418,415
15000 FT^2	$100,684	$486,187	$129,944	$627,476

CHART D

CURRENT & UPDATED CALCUATED FEE EXAMPLES CURRENT AT VARIABLE MITIGATION LEVELS (Non-locally occupied mitigated at 100%) UPDATED AT 100% MITIGATION LEVEL (Locally and Non-locally occupied)				
House size	**2020 Fee Calculated @ 100% AMI Variable Mitigation Levels** **5751-8000 Mitigated at 60%** **8001-11000 Mitigated at 80%** **11001-15000 Mitigated at 100%**		**Updated 2021 Fee Calculated @ 80% AMI 100% Mitigation Level All Sizes: 5751-15000 sq. feet**	
	Locally Occupied	**Second Home**	**Locally Occupied**	**Second Home**
5751 FT^2	$16,808	$107,691	$36,166	$139,030
8500 FT^2	$42,900	$249,927	$69,229	$322,658
10000 FT^2	$53,708	$324,125	$86,666	$418,415
15000 FT^2	$100,684	$486,187	$129,944	$627,476

Sales Data Collection

The sales data currently collected to determine the cost of free market housing is from specified sales of residential property only within the unincorporated areas of the County. As a result of housing development not always being located within the unincorporated County but also within the municipalities, data may be included from municipal sales as well.

As illustrated above, the current fee at 100% AMI and using sales data from the unincorporated area of the County is **$214,532** per employee. Including sales data from the entire county raises this amount to **$374,943**. If the AMI is reduced to 80%, the fee goes to **$259,286** using only unincorporated area sales data. Reducing the AMI to 80% and using sales data from the entire county takes the fee to **$419,698** per employee.

Attachment One to this Memo illustrates this result for the previous representative house sizes. The upper Chart in the Attachment shows the change in fee with sales data collection for the entire County at 100% AMI and the lower Chart shows the change in fee with sales data collection for the entire County at 80% AMI.

Use of Comparative Fee Levels

Comparative fee levels charts illustrating changes to one or more variables are presented in this memo for the Board to examine how the fee changes with adjustment to certain variables. Looking at these amounts is meant to give the Board a sense of the fee's potential impact on those economies associated with real estate development. Adjustment to the fee calculation should not reflect a desire for a particular resulting fee but should reflect housing program objectives. In other words if efforts to create employee housing include areas within our municipalities then sales data should include those areas. If the County's goal is to provide housing to a class of households earning less than 100% of AMI, then the fee should be based upon a lower level of income.

RECOMMENDED ACTION:

Review and discuss the variables used to calculate the employee housing impact fee and adopt on second reading the attached ordinance implementing the stated Code amendments.

ATTACHMENTS:

Attachment 1: 2021 EHIF Comparison Current
Attachment 2: 2021 Methodology All County Sales Calc Sheet
Attachment 3: Ordinance
Attachment 4: Land Use Code Amendments – Title 8 Pitkin County Code