



City of Lafayette
Staff Report
City Council

Meeting Date: April 9, 2018

Staff: Mala Subramanian, City Attorney

Subject: Informational Update Regarding whether Terraces of Lafayette Apartment Project could be subject to a Referendum

Background

At the March 26, 2018 City Council meeting, the City Council requested an informational update regarding whether an approval of the Terraces of Lafayette Apartment Project could be subject to a referendum.

This report is for information purposes only and consistent with the limitations set forth in Salinas v. Vargas (2009) 46 Cal.4th 1. In Salinas v. Vargas, the court found that informational reports to assist the City Council with the operation and services of the City, which contain past and present facts and are not intended to sway voters or contain inflammatory language, are allowed.

Analysis

A referendum applies only to legislative acts. DeVita v. County of Napa (1995) 9 Cal.4th 763. Legislative acts generally involve the formulation of rules to be applied in all future cases, whereas adjudicatory and administrative acts generally involve the application of a fixed rule to a specific set of existing facts.

Legislative acts are actions which prescribe a new policy or plan, declare a public purpose and make provisions for the ways and means of the accomplishment of such policy, plan or public purpose. Administrative or adjudicatory acts, on the other hand, are those which are "necessary to carry out the legislative policies and purposes already declared by the legislative body." (Fishman v. City of Palo Alto (1978) 86 Cal.App.3d 506, 509.) Permits qualify as administrative acts and are not subject to referendum. (Wiltshire v. Superior Court (1985) 172 Cal.App.3d 296 [conditional use permits]; Fishman v. City of Palo Alto, supra 86 Cal.App.3d 506 [planned unit development permits].)

Here, the Terraces of Lafayette Apartment Project sought the following permits: Land Use permit; Hillside Development permit; Design Review; Grading permit; and a Tree permit. These permits qualify as administrative acts and are not subject to referendum.

Recommendation

Receive and file.