

The New York Times

A Smoking Ban in All Related Companies Rentals

By C. J. HUGHES

Published: June 13, 2013

In a move that may enrage those who enjoy a cigarette on their couch after work, but delight air-freshener-wielding neighbors, a major landlord has banned smoking in all of its apartments across the country.

As of this month, the Related Companies has decided that tenants can no longer light up in the 40,000 rental units it owns or manages. The edict, which builds on an effort that began for Related with a handful of its New York buildings in 2009, is meant to create healthier living conditions, company officials said.

Although the program will roll out gradually, it appears to be the first of this scale by a national property owner.

It also seems likely to create controversy. Where past efforts against smoking have focused on public gathering places — like bars, stadiums and courthouses — Related is now trying to prohibit legal private behavior.

Not that smokers will get kicked to the curb right away. New tenants must sign a contract promising not to smoke anywhere in the building, including their private terraces or balconies. If they break the rules, they can be evicted. But those already renting will not face the same fate until after they renew their leases and sign the no-smoking contract. With a turnover rate of 10,000 a year, Related's apartments could conceivably be smoke-free in a few years' time.

Critics point out that tenants could always lie about their habit, and hide it successfully. Also, it can be very difficult to evict tenants — especially those whose rents are regulated, as they have strong protections and guaranteed lease renewals.

But some smokers — and even nonsmokers — worry about privacy infringement and say Related is overreaching. "It's just mean," said Polina Skoch, a resident of Related's One Union Square South, who smokes half a pack of Marlboros a day.

Even though she signed her lease earlier and is out of the immediate line of fire, Ms. Skoch said she worried about the "Big Brother" vibe that the changes could facilitate, because Related will mostly rely on neighbors to report on neighbors. "I thought it couldn't get any worse when the city banned smoking in parks," she added.

But Jeffrey I. Brodsky, the president of Related Management, says people can't expect such freedoms in an apartment building, where resources are shared. "It's not unlike somebody playing their tuba at two in the morning and compromising their neighbors' efforts to enjoy their apartments," he said. "There's an expectation of certain

behavior.” As for the increasingly trendy smokeless cigarettes, Related says that because they don’t emit plumes, they aren’t banned — although “we reserve our right to adjust our program if they become known as hazardous to others,” a spokeswoman wrote in an e-mail. Related’s condominiums won’t be affected.

Many studies have proved that secondhand smoke, which is cited as the reason for most smoking bans, is a health hazard. What’s less obvious is how much smoke actually seeps from one apartment to the next. In New York last year, for instance, the 311 complaint line received 1,340 calls about smoke from other apartments. To put that in perspective, calls to 311 last year totaled 19.4 million, and 127,607 of them were complaints about noise from neighbors, officials said.

At the same time, fewer adults are smoking in New York. In 2002, according to the city health department, the rate was 22 percent; in 2011 it was 15 percent.

Whether the cause of that decline or just a coincidence, a raft of policies in the last decade have greatly limited where people can smoke. In New York, smoking was snuffed out in restaurants in 2002 and on beaches and in city parks in 2011; last year, Mayor Michael R. Bloomberg said he wanted every building, including co-ops and condos, to draft a smoking policy, whether pro or con, which some saw as encouraging bans on apartment smoking. The mayor also hopes to set limits on who can smoke: in April, officials unveiled a plan to raise the age limit for cigarette purchases to 21 from 18.

On some of its tactics, New York City has company. In recent years several cities and towns in California have banned smoking in apartments; San Rafael did so last fall. And in Sacramento this spring, a bill was introduced to ban smoking in multifamily housing statewide — although it was scuttled by concerns about the feasibility of enforcement.

But the fact remains that not everybody is convinced the only way to deal with smoking complaints is to ban smoking. Donald Erwin, a principal of Erwin & Bielinski, an architecture and engineering firm, said a minor renovation might be enough to remedy secondhand smoke.

During the last real estate boom, he explained, many people in condos and co-ops cut into buffering wall space when expanding their apartments, making it easier for secondhand smoke to travel. Also, newer condos often have thinner walls than century-old buildings, which explains why their tenants complain more frequently about smoking, said Mr. Erwin. He added that putting proper insulation inside walls, and seals around lights, can keep smoke out. “It can be incredibly simple to fix,” he said.

Some property managers, too, favor a less extreme approach than bans, like air purification systems, said Enid Hamelin, a spokeswoman for Lawrence Properties, which manages 65 buildings in New York.

“Whether it’s ethnic cooking, candles or incense,” Ms. Hamelin said, “we handle it the same way. You try very hard to avoid people getting emotional, try to handle it as Solomon-esque as you can.”

Since 2009, when Related began its antismoking program at TriBeCa Green in Battery Park City and the Sierra in Chelsea, courts have generally supported the legality of smoking bans in apartment buildings, lawyers say. With market-rate units, landlords can kick smokers out simply by deciding not to renew leases. But Related’s buildings have many rent-regulated units, including more than 4,000 in New York. Lawyers said protections like guaranteed lease renewals would make it difficult to evict smokers from these kinds of affordable apartments.

So far, at least, bans have rarely led to evictions. There haven’t been any in the dozens of buildings managed by Pan Am Equities since it imposed a smoking ban in 2008, said David Iwanier, a vice president of the company.

Only a single person has left 1510 Lexington Avenue, owned by Kenbar Management in East Harlem, where smoking is banned not only in the apartments but also on adjacent sidewalks, said Kinne Yon, a Kenbar principal. But that person, a cigar smoker, moved out voluntarily after just a few days, and got his security deposit back, Ms. Yon said.

Both Mr. Iwanier and Ms. Yon acknowledged, however, that smokers may avoid their buildings in the first place.

Co-ops are like rentals, in that rules can be passed by a majority of the co-op board, although a ban attempted by Lincoln Towers, the 452-unit Upper West Side complex, failed in 2002.

Condos are trickier, because bans usually require a change in bylaws, which means two-thirds of residents need to approve them. “And good luck getting a group of New Yorkers to agree on anything,” said **Adam Leitman Bailey**, a real estate lawyer who has handled several smoking cases. He added that if a building has unsold units controlled by the developer, who gets a vote for each one of them, the developer may decide to vote against a ban, so as not to limit the buyer pool.

Still, the 32-story Ariel West, a condo on the Upper West Side, banned smoking in 2011. Fines are \$150 for the first offense and go up by \$150 for each one that follows. And last winter, the 98-unit One Grand Army Plaza in Brooklyn banned smoking in all spaces except for private terraces and its roof.

This spring, after a few years of deliberation, Zeckendorf Towers, a 670-unit full-block development at Union Square, also put a ban in place, staking a claim as the largest apartment complex in the country to do so.

And with that kind of momentum on its side, Related is also acting in a favorable economic climate. Vacancy rates are low in many cities, which means that even limiting the applicant pool should not hurt the company’s ability to fill up its buildings.

During the recession, demand slackened everywhere, which delayed rollout of the initial ban. “There were a lot of other exigencies in the marketplace for a while,” Mr. Brodsky said.

Under the plan, Related will also ban smoking in its new rental buildings; one of them, 500 West 30th Street at 10th Avenue, a 386-unit rental, is to open next year in the Hudson Yards neighborhood. Outside New York, soon-to-be-completed projects include Ocean Avenue South in Santa Monica, Calif.; 111 West Wacker Drive in Chicago; and 100 Arlington Street in Boston.

Whether smokers will decide to quit in order to live in a Related building, or simply go somewhere else, remains to be seen. But Mark Panzarino, an artist who also lives at One Union Square South, strongly supports what his landlord is doing.

“Coming here and wanting to smoke would be like asking for meat at a vegetarian restaurant,” he said. “It’s just something you’re not allowed to do.”