

WACONIA CITY COUNCIL MEETING AGENDA



Monday, May 22, 2023
5:30 PM

VISION STATEMENT

A thriving, connected community with deep roots: a great place to live for a lifetime.

MISSION STATEMENT

A city that leads, serves, and governs to enhance the quality of life for all community members.

MAYOR: NICOLE WALDRON
COUNCIL MEMBER : RANDY SORENSEN
COUNCIL MEMBER: STEVE YETZER
COUNCIL MEMBER: NICK GLEASON
COUNCIL MEMBER: JEFF GRENGS

NOTE: TO ENSURE THAT YOU ARE PRESENT FOR ITEMS OF INTEREST, PLEASE BE PRESENT AT 6:00 P.M.

Special Meeting of the City Council

Those with items on the agenda should reach out to their staff contact. Others who wish to participate in the meeting, please contact the City Administrator at 952-442-3100 or sfineran@waconia.org to make certain that you are called upon during the meeting.

1. CALL MEETING TO ORDER AND ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. ADOPT AGENDA

4. COUNCIL BUSINESS

- 1) [Violation of Tobacco Ordinance Hearing - Cloud X](#)
Adopt Resolution #2023-129, Suspending and Admonishing Cloud X

5. ADJOURN REGULAR MEETINGOFFICE OF THE CITY ADMINISTRATOR

Shane Fineran



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: May 22, 2023

Item Name: Violation of Tobacco Ordinance Hearing - Cloud X

Originating Department: Administration

Presented by: Shane Fineran

Previous Council Action (if any):

Item Type (X only one):	Consent		Regular Session	X	Discussion Session	
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED (Include motion in proper format.)

Adopt Resolution #2023-129, Suspending and Admonishing Cloud X

EXPLANATION OF AGENDA ITEM (Include a description of background, benefits, and recommendations.)

This request for Council action is presented because of alleged violations of the City of Waconia's Code of Ordinances (the "Code"), as it applies to a license to sell tobacco and related products ("licensed products") held by Tobacco City LLC, ("Licensee") which does business as Cloud X Vapes. Within the past three years, Licensee and its owner, Cade Chouinard, have received three citations for alleged violations of the City's Code of Ordinances by selling licensed to individuals who were underage. City Staff are concerned that repeated citations have not prompted Licensee to diligently comply with the City's ordinances and Minnesota law. Therefore, because of a recent compliance check failure, Staff are recommending that the City Council suspend Licensee's license for a period of 7 days.

The Code at Section 510.07 prohibits the sale of licensed products such as tobacco or nicotine products, including vaping products, to individuals under the age of 21. Sales of such products to persons under the age of 21 are also prohibited by Minnesota Statutes 609.685 and 609.6855. The Code at Section 500.06 that all holders of licenses in the City will comply with all laws and ordinances applicable to the licensed activity, and at Section 500.07 allows for the suspension for up to 60 days or revocation of any license when the City Council finds that the licensee has violated any law or ordinance applicable to the licensed activity.

Licensee currently holds a license to sell tobacco products, including vaping products and other nicotine delivery products, out of the Cloud X Vapes shop on 144 Depot Drive. Licensee has received three citations within the last three years, on 11/15/2021, 4/25/2022, and 3/13/2023. It has paid or tendered payment for the fine associated with the citations each time and has not contested the citations.

This spring, on March 12, 2023, the Carver County Sheriff's Department conducted a compliance check at the Cloud X vapes shop using an undercover underage buyer supervised by Sergeant Meier of the Sheriff's Department. During that compliance check, an employee at Cloud X sold a licensed product to the underaged buyer, who paid with marked cash, and who did not have any identification material indicating that the buyer was over 21 years old. The Sheriff's Department subsequently issued the 3/13/2023 citation for sale of licensed products to an underaged person.

Attached to this request are the citations issued by the Sheriff's department to Licensee for sales of licensed products to individuals under the age of 21, the incident report describing the March 12 compliance check, and a proposed resolution suspending Licensee's license for seven days. Officers from the Carver County Sheriff's Department will be present at the hearing to present testimony related to the citations which were issued to Licensee.

Attachments:

1. [Cloud X citations for hearing.pdf](#)
2. [ICR 23006548.pdf](#)
3. [23129res_Suspending_and_Admonishing_Cloud_X_TX6RWN2TNU6F-560593110-1819.pdf](#)

FINANCIAL IMPLICATIONS:

Funding Sources & Uses:

Budget Information:

☐ Budgeted☐ Non Budgeted☐ Amendment Required**ADVISORY BOARD RECOMMENDATIONS:**

Planning Commission

Parks and Recreation Board

Safari Island Advisory Board

Other

**CIVIL CITATION
TOBACCO ORDINANCE VIOLATION**

ICR # <u>22010665</u>						
NAME: FIRST <u>Cade</u>		MIDDLE/MAIDEN <u>August</u>		LAST <u>Chouinard</u>		
STREET ADDRESS <u>7588 392nd St</u>				PHONE <u>651-808-0818</u>		
CITY <u>North Branch</u>		STATE <u>MN</u>		ZIP <u>55056</u>		
DATE OF BIRTH <u>05/09/1995</u>	HAIR <u>Blu</u>	EYES <u>Blu</u>	HEIGHT <u>5'11"</u>	WEIGHT <u>180</u>	SEX <u>M</u>	
VIOLATION TYPE: ☐ JUVENILE: POSSESSION/USE ☐ SELLER: SELL TO UNDERAGE ☒ RETAILER: LICENSEE VIOLATION (SUBMIT TO RECORDS)						
DATE OF OFFENSE <u>02/11/2022</u>	TIME	AREA	GRID #			
OFFENSE LOCATION <u>144 Depot Dr, Waconia, MN</u>		CITY or TOWNSHIP				
COMPLETE FOR JUVENILE VIOLATOR: PARENT(S) _____ PHONE: _____ NOTIFIED: Y / N DATE: _____ TIME: _____						
DEPUTY OBSERVATIONS: <u>Cloud X Vapes Sold Tobacco Products to a minor. The citier is the license holder.</u>						
This citation is for violation of local tobacco ordinances that allow a violator to pay an administrative fine as opposed to a criminal fine. The purpose of this is to provide the local governmental units with an informal, cost effective and expeditious alternative to the criminal charges for violation of the ordinance. FAILURE TO PAY THE ADMINISTRATIVE FINE WITHIN TWO WEEKS (14 DAYS) OF RECEIVING THIS CITATION WILL RESULT IN A COURT SUMMONS BEING ISSUED TO YOU. IF FOUND GUILTY, THE COURT CAN IMPOSE A MORE SEVERE DISPOSITION.						
ADMINISTRATIVE FINES DUE DATE: <u>05/26/2022</u>						
☒ City of Waconia Ordinance #510 Fee: (Circle One) \$25 \$50 Other Make Check Payable to: City of Waconia Mail/Deliver to: City of Waconia 201 Vine St S Waconia, MN 55387 952-442-2184		☐ City of Watertown Ordinance #34.4 Fee: \$75 Make Check Payable to: City of Watertown Mail/Deliver to: City of Watertown 309 Lewis Ave S Watertown, MN 55388 952-955-2681		☐ County of Carver Grid # _____ Ordinance #42 Fee: (Circle One) \$25 \$50 Other Make Check Payable to: Carver County Mail/Deliver to: Carver County 600 E 4th St Chaska, MN 55318-0069		
The Undersigned, being duly sworn, deposes and says that the person named on this complaint did commit the above offense(s). <u>Ben Sinko</u> <u>855</u> DEPUTY BADGE CARVER COUNTY SHERIFF'S OFFICE 606 E. 4TH ST., CHASKA, MN 55318 952-361-1212						

**CIVIL CITATION
TOBACCO ORDINANCE VIOLATION**

ICR # <u>21030933</u>						
NAME: FIRST <u>Cade</u>		MIDDLE/MAIDEN <u>August</u>		LAST <u>Chouinard</u>		
STREET ADDRESS <u>7588 392nd St</u>				PHONE <u>651-808-0818</u>		
CITY <u>North Branch</u>		STATE <u>MN</u>		ZIP <u>55056</u>		
DATE OF BIRTH <u>05/09/1995</u>	HAIR <u>Blu</u>	EYES <u>Blu</u>	HEIGHT <u>5'11"</u>	WEIGHT <u>180</u>	SEX <u>M</u>	
VIOLATION TYPE: ☐ JUVENILE: POSSESSION/USE ☐ SELLER: SELL TO UNDERAGE ☒ RETAILER: LICENSEE VIOLATION (SUBMIT TO RECORDS)						
DATE OF OFFENSE <u>11/15/2021</u>	TIME	AREA	GRID #			
OFFENSE LOCATION <u>144 Depot Dr Waconia, MN</u>		CITY or TOWNSHIP				
COMPLETE FOR JUVENILE VIOLATOR: PARENT(S) _____ PHONE: _____ NOTIFIED: Y / N DATE: _____ TIME: _____						
DEPUTY OBSERVATIONS: <u>Through investigation it was found that Cloud X Vapes Sold Tobacco Products to a minor.</u>						
This citation is for violation of local tobacco ordinances that allow a violator to pay an administrative fine as opposed to a criminal fine. The purpose of this is to provide the local governmental units with an informal, cost effective and expeditious alternative to the criminal charges for violation of the ordinance. FAILURE TO PAY THE ADMINISTRATIVE FINE WITHIN TWO WEEKS (14 DAYS) OF RECEIVING THIS CITATION WILL RESULT IN A COURT SUMMONS BEING ISSUED TO YOU. IF FOUND GUILTY, THE COURT CAN IMPOSE A MORE SEVERE DISPOSITION.						
ADMINISTRATIVE FINES DUE DATE: <u>04/19/2022</u>						
☒ City of Waconia Ordinance #510 Fee: (Circle One) \$25 \$50 Other Make Check Payable to: City of Waconia Mail/Deliver to: City of Waconia 201 Vine St S Waconia, MN 55387 952-442-2184		☐ City of Watertown Ordinance #34.4 Fee: \$75 Make Check Payable to: City of Watertown Mail/Deliver to: City of Watertown 309 Lewis Ave S Watertown, MN 55388 952-955-2681		☐ County of Carver Grid # _____ Ordinance #42 Fee: (Circle One) \$25 \$50 Other Make Check Payable to: Carver County Mail/Deliver to: Carver County 600 E 4th St Chaska, MN 55318-0069		
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**CIVIL CITATION
TOBACCO ORDINANCE VIOLATION**

ICR # 23006548						
NAME: FIRST		MIDDLE/MAIDEN		LAST		
Cloud		X		Vapes		
STREET ADDRESS				PHONE		
144 Depot Dr						
CITY		STATE		ZIP		
Waconia		MN		55387		
DATE OF BIRTH	HAIR	EYES	HEIGHT	WEIGHT	SEX	
VIOLATION TYPE: ☐ JUVENILE: POSSESSION/USE ☐ SELLER: SELL TO UNDERAGE ☒ RETAILER: LICENSEE VIOLATION (SUBMIT TO RECORDS)						
DATE OF OFFENSE		TIME		AREA		GRID #
03/12/2023		1327				
OFFENSE LOCATION				CITY or TOWNSHIP		
144 Depot Dr				Waconia MN		
COMPLETE FOR JUVENILE VIOLATOR:						
PARENT(S) _____				PHONE: _____		
NOTIFIED: Y / N				DATE: _____		TIME: _____
DEPUTY OBSERVATIONS:						
Code August + Chouinard 7588 392nd St North Branch, MN 55056						
This citation is for violation of local tobacco ordinances that allow a violator to pay an administrative fine as opposed to a criminal fine. The purpose of this is to provide the local governmental units with an informal, cost effective and expeditious alternative to the criminal charges for violation of the ordinance. FAILURE TO PAY THE ADMINISTRATIVE FINE WITHIN TWO WEEKS (14 DAYS) OF RECEIVING THIS CITATION WILL RESULT IN A COURT SUMMONS BEING ISSUED TO YOU. IF FOUND GUILTY, THE COURT CAN IMPOSE A MORE SEVERE DISPOSITION.						
ADMINISTRATIVE FINES DUE DATE: 5/07/2023						
☒ City of Waconia Ordinance #510 Fee: (Circle One) \$1,000.00 \$25 \$50 Other Make Check Payable to: City of Waconia Mail/Deliver to: City of Waconia 201 Vine St S Waconia, MN 55387 952-442-2184		☐ City of Watertown Ordinance #34.4 Fee: \$75 Make Check Payable to: City of Watertown Mail/Deliver to: City of Watertown 309 Lewis Ave S Watertown, MN 55388 952-955-2681		☐ County of Carver Grid # _____ Ordinance #42 Fee: (Circle One) \$25 \$50 Other Make Check Payable to: Carver County Mail/Deliver to: Carver County 600 E 4th St Chaska, MN 55318-0069		
The Undersigned, being duly sworn, deposes and says that the person named on this complaint did commit the above offense(s). B. Sinko DEPUTY						855 BADGE
CARVER COUNTY SHERIFF'S OFFICE 606 E. 4TH ST., CHASKA, MN 55318 952-361-1212						6090

CARVER COUNTY SHERIFF'S OFFICE**INCIDENT REPORT****ICR: 23006548**☐ **SQUAD VIDEO AVAILABLE** ☐ **CONDUCTED ELECTRICAL WEAPON USED** ☐ **OPIOID ANTAGONIST USED****SPECIAL NOTES OR INSTRUCTIONS**

CO ATTN Y FORMAL COMPL ☐ CO ATTN Y REVIEW ☐ CITY ATTN Y FORMAL COMPL ☐ CITY ATTN Y REVIEW ☐
CO SOCIAL SERVICES ☐ CO MENTAL HEALTH ☐ SCHOOL CRIME ☐ PUBLIC HEALTH ☐ MAARC COMPLETED ☐

OTHER:**Incident Description:** Tobacco Sales Under 21**Date Incident Occurred:** 03/12/2023**Date This Report Written:** 03/12/2023

Redaction Per
MN Statute
13.82 subd. 17 ()

SYNOPSIS:

- An adult male sold tobacco vape products to an individual under 21 years of age during a compliance check. The male was issued a citation.

DETAILS:

1. On 03/12/2023 at 1327 hours, Sgt. Meier was conducting a tobacco compliance check at Cloud X Vapes (144 Depot Dr) Waconia, MN. An adult male later identified as **Daniel Randy Totzke DOB:** [REDACTED] sold a Loon Maxx tobacco vape product to a decoy, who paid with a marked \$20.00 bill.
2. Sgt. Meier returned to the store and confronted Totzke with the vape product and the change, retrieving the marked bill.
3. I arrived and spoke to Totzke in the store. I asked Totzke why he did not card the decoy and he said, "I was just being stupid." I provided Totzke with citation number 10002300674, Sale Tobacco under 21 years old, MN §609685.1a(a).

End of Report**Deputy Ben Sinko | Badge # 855**

**CITY OF WACONIA
RESOLUTION NO. 2023-129
RESOLUTON FINDING A VIOLATION OF
CITY ORDINANCES AND SUSPENDING
LICENSE TO SELL TOBACCO AND RELATED PRODUCTS**

WHEREAS, at a special meeting of the City Council on May 22, 2023 the City Council heard allegations and evidence to support the allegations that Tobacco City LLC has violated the City of Waconia's Code of Ordinances (the "Code") Chapters 500 and 510; and

WHEREAS, because of prior citations issued to Tobacco City LLC the City finds that Tobacco City LLC had knowledge of Code violations occurring at its premises and ample opportunity to take measures to prevent future violations; and

WHEREAS, based on testimony from the personal knowledge of Sergeant Meier of the Carver County Sheriff's department and evidence of a conviction stemming from the events described by Sergeant Meier, the City finds that a violation of the Code Section 510.07 occurred on March 12, 2023 when Tobacco City LLC's employee sold licensed tobacco or nicotine products to a person under the age of 21; and

WHEREAS, Minnesota Statutes Chapters 609.6855 also prohibit the sale of tobacco and nicotine products to persons under the age of 21; and

WHEREAS, the Code at Section 500.06 requires all holders of licenses issued by the City to comply with any ordinance or law applicable to the licensed activity; and

WHEREAS, the Code at Section 500.07 provides for suspension or revocation of any license issued by the City when the City Council finds that a violation of an applicable law or ordinance has occurred; and

WHEREAS, the City Council finds that Tobacco City LLC violated the Code Section 510.07 and Minnesota Statutes Chapter 609.6855 when it sold licensed products to a person under the age of 21, and violated Code Section 500.06 when it violated Code Section 510.07 and Minnesota Statutes Chapter 609.6855;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Waconia, Minnesota, that:

1. The above recitals and findings are incorporated as part of these resolutions.
2. The City of Waconia finds that Tobacco City LLC violated the Code of Ordinances.
3. The City of Waconia hereby suspends Tobacco City LLC's license for a period of seven (7) days, beginning on _____ and ending on _____.

Passed and adopted by the City Council of the City of Waconia this 22nd day of May, 2023.

Nicole Waldron, Mayor

ATTEST: _____
Jacqueline Schulze, City Clerk