RESOLUTION NO. 16-7654

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DOWNEY REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION FOR THE PLACEMENT OF A MEASURE TO LEVY A TRANSACTIONS AND USE TAX OF ONE-HALF OF ONE PERCENT FOR A PERIOD OF 20 YEARS WITH AN INDEPENDENT CITIZENS' OVERSIGHT COMMITTEE TO REVIEW EXPENDITURE OF REVENUES AND MAKE APPROPRIATE RECOMMENDATIONS THEREFOR TO BE HELD ON NOVEMBER 8, 2016 WITH THE STATEWIDE GENERAL ELECTIONS TO BE HELD ON THAT DATE PURSUANT TO SECTION 10403 OF THE CALIFORNIA ELECTIONS CODE

WHEREAS, the City Council is submitting to the voters the question relating to the levy of a one-half of one percent transactions and use tax as set forth in this Resolution; and,

WHEREAS, it is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of Los Angeles canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DOWNEY DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of Section 10403 of the California Elections Code, the Board of Supervisors of the County of Los Angeles is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 8, 2016, for the purpose of placing before the voters a measure to levy a transactions and use tax of one-half of one percent.

SECTION 2. That a measure is to appear on the ballot as follows:

TRANSACTIONS AND USE TAX. To maintain and improve city services including city-run police and fire departments, paramedic/9-1-1 emergency response, anti-gang/drug/crime programs, school safety, after-school and seniors programs; ensure fire engines and emergency vehicles have updated equipment; and repair streets/potholes; shall the ordinance to increase the sales tax by one-half of one percent, providing $9,000,000 annually, to expire after 20 years, requiring audits, public disclosure of funds, and all funds only for Downey be adopted?	YES NO

SECTION 3. That the proposed full text of the ordinance authorizing the transactions and use tax to be approved by the voters, entitled the "City of Downey Transactions and Use Tax Ordinance," is attached as Exhibit "A" to this Resolution. The full text of the ordinance shall be printed in the Voter Information Pamphlet.

SECTION 4. That the proposed transactions and use tax is a general tax requiring the approval of a majority of votes cast by qualified electors of the City voting in the election on the issue.

SECTION 5. That the Registrar of Voters of the County of Los Angeles is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used. The election will be held and conducted in accordance with California Elections Code Section 10418 and the provisions of law regulating the Statewide Election.

SECTION 6. That the Board of Supervisors is requested to issue instructions to the Registrar of Voters of the County of Los Angeles to take any and all steps necessary for the holding of the consolidated election.

SECTION 7. That the City of Downey recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 8. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and Registrar of Voters of the County of Los Angeles.

SECTION 9. That the City Clerk shall certify to the passage and adoption of this resolution.

APPROVED AND ADOPTED this 28th day of June, 2016.

ALEX SAAB, Mayor

ATTEST:

ADRIA M. JIMENEZ, MMC
City Clerk

I HEREBY CERTIFY that the foregoing Resolution was adopted by the City Council of the City of Downey at a regular meeting held on the 28th day of June, 2016 by the following vote, to wit:

AYES:	Council Members: Ashton, Brossmer, Marquez, Vasquez
NOES:	Council Member: Mayor Saab
ABSENT:	Council Member: None.
ABSTAIN:	Council Member: None.

ADRIA M. JIMENEZ, MMC
City Clerk

EXHIBIT A

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF DOWNEY ENACTING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION, UPON ADOPTION BY THE VOTERS

The People of the City of Downey do hereby ordain as follows:

Section 1. Chapter 1E is hereby added to Article VI of the Downey Municipal Code with the following provisions:

"Section 6199.60. Title. This chapter shall be known as the City of Downey Transactions and Use Tax Ordinance. The City of Downey will hereinafter be called City. This chapter shall be applicable in the incorporated territory of the City.

Section 6199.61. Definitions. The following words and phrases shall be defined as set forth in this chapter, except that any term or phrase not defined in this shall have the same meaning as that term or phrase is defined in the California Revenue and Taxation Code, Division 2, Parts 1.6 and 1.7:

A. "City" means the City of Downey.

B. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter by vote of the electorate on November 8, 2016.

C. "Chapter" means Chapter 1E of Article VI of the Downey Municipal Code.

D. "State" means the State of California.

Section 6199.62. Purpose. This chapter is adopted to achieve the following, among other purposes, and it shall be interpreted liberally in order to accomplish all of its lawful purposes:

A. To impose a retail transactions and use tax to be applied throughout the entire territory of the City to the fullest extent permitted by law and in accordance with the provisions of Part 1.6 (commencing with section 7251) of Division 2 of the Revenue and Taxation Code and section 7285.9 of Part 1.7 of Division 2, which authorizes the City to adopt this Ordinance if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax chapter that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes and, at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

E. To provide transactions and use tax revenue to the City to be used for general purposes.

Section 6199.63. Contract with the State. Prior to the Operative Date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this chapter; provided, that if the City shall not have contracted with the State Board of Equalization prior to the Operative Date, it shall nevertheless so contract and in such a case the Operative Date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 6199.64. Transactions Tax Rate. For the privilege of selling tangible personal property at retail, a general transactions tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 0.5% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail within the territory of the City on and after the Operative Date of this chapter.

Section 6199.65. Place of Sale. For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Section 6199.66. Use Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the Operative Date of this chapter for storage, use or other consumption in the territory of the City at the rate of 0.5% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made.

Section 6199.67. Adoption of Provisions of State Law. Except as otherwise provided in this chapter, and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted, incorporated, and made a part of this chapter as though fully set forth herein.

Section 6199.68. Limitations on Adoption of State Law and Collection of Use Taxes. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State is named or referred to as the taxing agency, the name of the City shall be substituted. However, this substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, Victim Compensation and Government Claims Board, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of the substitution would require action to be taken by or against the City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter.

3. In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

    a. Provide an exemption from the tax in this chapter with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from the tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

    b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the same provision of that code.

4. In sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in section 6203 and in the definition of that phrase in section 6203.

Section 6199.69. Permit Not Required. If a seller's permit has been issued to a retailer under section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this chapter.

Section 6199.70. Exemptions and Exclusions.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government;

2. Sales of property to be used outside the City, which is shipped to a point outside the City pursuant to the contract of sale by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

    a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

    b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this chapter.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the Operative Date of this chapter.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance;

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California;

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this chapter;

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the Operative Date of this chapter.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for, a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 6199.71. Amendments. All amendments subsequent to the Effective Date of this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become adopted and part of this chapter; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter. The City Council or the City's voters may amend this chapter to comply with applicable law or as may be otherwise necessary to further the chapter's stated purposes. However, as required by Article XIII C of the California Constitution, no amendment to this chapter may increase the rates of the taxes authorized by this chapter unless such amendment is submitted to and approved by the voters.

Section 6199.72. Prohibition on Enjoining Collection. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this chapter, or Part 1.6 of Division 2 of the

Revenue and Taxation Code, of any tax or any amount of tax required to be collected under this chapter.

Section 6199.73. Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter or the application of such provision to other persons or circumstances shall not be affected thereby.

Section 6199.74. Effective Date. This chapter relates to the levying and collecting of City transactions and use taxes and shall take effect immediately. However, no tax imposed by this chapter shall be effective unless that tax has been approved by the voters of the City as required by section 2(b) of Article XIII C of the California Constitution and applicable law.

Section 6199.75. Precedence over Other Provisions in the Municipal Code. Any provision of the Downey Municipal Code or appendices thereto inconsistent with the provisions of this chapter, to the extent of such inconsistency and no further, is hereby repealed or modified to the extent necessary to effect the provisions of this chapter.

Section 6199.76. Independent Citizen Oversight. A five-member Independent Citizens' Advisory Committee will be created by the City Council and shall meet at least quarterly to review the expenditure of revenues generated by the tax imposed by this chapter and to make recommendations to the City Council regarding those expenditures. The Independent Citizens' Advisory Committee shall meet publicly on at least a quarterly basis to review all revenues and expenditures of the transactions and use tax imposed by this chapter, review annual audit reports related to the tax, and make at least one written annual report to the City Council at a public meeting summarizing the Independent Citizens' Advisory Committee's findings and including any appropriate recommendations. The minutes of the meetings of Independent Citizens' Advisory Committee shall be provided to the City Council and placed on the next available regular City Council meeting agenda for informational purposes.

Section 6199.77. Audit and Review. The proceeds of the tax imposed by this chapter, as well as the expenditure thereof, shall be audited annually by an independent accounting firm. The City Council shall discuss the results of such audit at a meeting of the City Council that is open to the public. The report of such audit shall be posted on the City's website.

Section 6199.78. Sunset of Tax. The taxes imposed by this chapter shall remain effective until the soonest to occur of (i) the voters repeal this Ordinance; or (ii) twenty (20) years from the date the taxes imposed by this chapter are first collected. The taxes imposed by this chapter may be renewed prior to the sunset period by a majority of the electors voting in an election."

Section 2. Execution. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance upon certification by the City Council of the results of the election approving this Ordinance.

PASSED AND ADOPTED by the City Council of the City of Downey, on

_____, by the following vote:

AYES:

NOES:

ABSENT:

Alex Saab, Mayor

Attest:

Adria M. Jimenez, MMC, City Clerk

I hereby certify that this Ordinance was APPROVED by the voters of the City of Downey, State of California, at a general election held on November 8, 2016 and by the City Council of the City of Downey at a regular meeting of the Council held on November ___, 2016.

Alex Saab, Mayor

Attest: _____
Adria M. Jimenez, MMC, City Clerk