

**MEMORANDUM OF UNDERSTANDING
BETWEEN
DOWNTOWN BRENTWOOD COALITION
AND THE CITY OF BRENTWOOD**

This Memorandum of Understanding ("MOU") is entered this 13th day of July 2021, and effective on July 1, 2021 ("Effective Date"), by and between the City of Brentwood, a municipal corporation of the State of California ("City"), and Downtown Brentwood Coalition, a 501(c)(6) non-profit corporation in the State of California ("Coalition") (each a Party, and collectively, the "Parties") for delivery and administration of the Main Street America Accredited Member program for Downtown Brentwood, including but not limited to downtown district and downtown events promotion, destination tourism, downtown area district and membership management.

RECITALS

A. Downtown Brentwood is the historical commercial and entertainment focused heart of Brentwood, comprising of the areas generally defined by the City of Brentwood Downtown Specific Plan, and incorporating surrounding commercial development areas and residential neighborhoods that support the economic and cultural vibrancy of the community, attached as "C-1 Downtown Specific Plan Boundary" as part of Exhibit "C" which is attached and incorporated into by this reference ("Downtown Brentwood" or "Downtown").

B. Since 2008, the Coalition, representing a group of Downtown business owners, began the process of advancing Downtown Brentwood as a destination, including promoting the identity and brand of the Downtown area, promoting Downtown's key attributes, and its members.

C. On July 09, 2013, the Coalition became a mutual benefit corporation with the State of California for the purpose to enhance economic growth of the Downtown area by focusing on education, promotion, and development of the business community, and those areas of the community affecting businesses.

D. In 2019, the Coalition was recognized by Main Street America as an Affiliate Program Member for meeting the standards of performance for the program.

E. The Parties seek to designate Downtown Brentwood, through the efforts and direction of the Coalition, as a Main Street America Accredited Member, which includes meeting rigorous national program performance standards and achieving meaningful revitalization for Downtown.

NOW, THEREFORE, IT IS HEREBY AGREED by the Parties as follows:

1. Responsibilities of the Coalition. Along with the terms and conditions of this MOU, the Coalition agrees to be responsible for and complete those items set forth in the attached Exhibit "A," which is incorporated by this reference.

2. Responsibilities of the City. Along with the terms and conditions of this MOU, the City agrees to be responsible for and complete those items set forth in the attached Exhibit "B," which is incorporated by this reference.

3. Relationship of the Parties. The Coalition is free from the control and direction of the City, in pursuit of the Coalition's independent calling, and not as an employee of the City. It is understood that this is a MOU by and between independent contractors and is not intended to, and will not be construed

to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor. Any persons used or hired by the Coalition to provide services under this MOU will not be considered employees of City for any purposes whatsoever.

4. Term. This MOU will commence on the Effective Date and, unless terminated earlier pursuant to this MOU, will terminate June 30, 2024.

5. Payment. For the term of this MOU, the City Council will provide payments as more explicitly outlined in Exhibits "A" and "B," in an amount not to exceed \$190,000. The Coalition will be responsible for any additional programs, activities, and services not identified in this MOU, or as provided for in Exhibits "A" or "B." The Coalition will invoice City monthly for the services identified in Exhibits "A" and "B."

6. Indemnity. Coalition will hold harmless, defend and indemnify City, its officers, agents, volunteers and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of this MOU, caused in whole or in part by any act or omission of the Coalition, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of City.

7. Insurance. Each Party will maintain comprehensive general liability insurance in the amount of one million dollars (\$1,000,000) combined single limit to protect the Parties, their officers, employees and agents against claims for bodily injury, and property damage arising from any Party's participation in the activities described herein. The form of such insurance will be satisfactory to each Party and may include self-insurance at levels acceptable to all Parties. Each Party's policy or policies will name the other Party as an additional insured. This Section 7 will survive the expiration of this MOU.

8. Non-discrimination. The Parties will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

9. Entire Agreement. This MOU and its Exhibits "A," "B," and "C" contain the entire understanding and agreement of the Parties, and all oral or written representations, understandings or agreements are expressly stated in this MOU. In case of a conflict between the terms of this MOU and any Exhibit attached, the terms of this MOU will prevail. No testimony or evidence of any such representations, understandings, or covenants will be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this MOU.

10. Amendments. Changes to the terms and conditions of this MOU will be made only by written amendment signed by the Parties.

11. Notices. All notices with respect to this MOU will be given in writing by first class mail to the Parties, or to such other persons' addresses or telephone numbers as the Parties may designate in writing from time to time as follows:

City: City of Brentwood
Attention: Joshua Ewen, Senior Analyst
City Manager – Economic Development
150 City Park Way
Brentwood, CA 94513

Coalition: Downtown Brentwood Coalition
Attention: Peter Jacoway, President
235 Oak Street
Brentwood, CA 94513

Notice will be deemed effective on the date personally delivered or, if mailed, 3 days after depositing it in the United States Mail. Coalition must notify City within 14 days of any change to its mailing address.

12. Termination. Either Party may terminate this MOU at any time after a discussion and delivery of written notice to the other Party, with such termination effective immediately. In the event of termination of this MOU, any unexpended funds will be returned to the Party that has contributed them. The Coalition shall relinquish all materials and files related to this MOU and Main Street America to the City upon termination.

13. Assignment. Neither Party will assign any right or obligation pursuant to this MOU without the written consent of the other Party. Any attempted or purported assignment without the written consent of the other Party will be void and of no effect.

14. Third Parties. This MOU does not confer any benefits to any third party.

15. Jurisdiction and Venue. Any action at law or in equity brought under this MOU for the purpose of enforcing a right or rights provided for by this MOU will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

16. Pandemic Health Laws. The Coalition agrees to comply with all local, state, or federal laws that have been or may be enacted in response to the COVID-19 pandemic (collectively, "Health Laws"), which include all of the County of Contra Costa Health Orders. Failure to fully comply with the Health Laws constitutes a material default, subject to all available remedies including suspension or termination of the MOU.

17. Paragraph Headings. Paragraph headings are used for convenience only and will not be deemed to be a part of such paragraphs and will not be construed to change the meaning of the paragraphs.

18. No Waiver. Waiver by either Party of any default, breach or condition precedent of this MOU will not be construed as a waiver of any other default, breach or condition precedent or of any other right under this MOU.

19. Severability. If any term, provision, covenant, or condition of this MOU is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this MOU will nonetheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions.

20. Maintenance of Records. Coalition will maintain complete and accurate records with respect to costs incurred under this MOU for forty-two (42) months from the date of execution of the MOU. All records will be clearly identifiable.

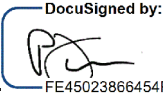
21. Signatures.

21.1 Counterparts. This MOU may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute the same instrument.

21.2 Digital/Electronic Signatures. Using a City-approved method, this MOU may be executed through the use of digital or electronic signatures in accordance with Government Code Section 16.5. The presence of an electronic signature on this Agreement will be construed as the Parties' consent to do business electronically.

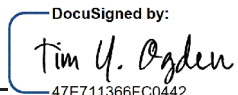
22. Authority. The individuals executing this MOU represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this MOU on behalf of the respective legal entities of the Parties.

Downtown Brentwood Coalition:

By:  _____
FE45023866454FD...
Peter Jacoway,
President

By:  _____
29D07B22E2334C5...
Rebecca Bloomfield,
Vice President

City of Brentwood:

By:  _____ 7/17/2021
47E711366FC042...
Tim Y. Ogden, City Manager

ATTEST:  _____
57F46DC3F283499...
Margaret Wimberly, City Clerk


APPROVED AS TO FORM:
By:  _____
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Shanna Edwards for
DAMIEN BOWER, City Attorney

Exhibit A Coalition Responsibilities

1. Administration and Main Street America Program:

A. The Coalition, its Board of Directors (“Board”) and its appointed representatives are solely responsible for administrative operations of its organization. This responsibility includes, but is not limited to, the development and revision of the following key functions and documents:

- Coalition Articles of Incorporation: The Coalition has the sole responsibility for all Coalition Articles of Incorporation as per State and Federal rules and guidelines. The Coalition will provide a copy to the City annually.
- Coalition Bylaws: The Coalition has the sole responsibility for all bylaws of the Coalition which includes regular or as needed revisions. The Coalition will provide a copy to the City annually.
- Coalition Financial Statements/Records: The Coalition has the sole responsibility for all financial monthly reports and records, including the annual filing of Federal, State and City required documents. Failure to file such documents and maintain 501(c)(6) non-profit status will result in the termination of this MOU. The Coalition will provide the City an annual financial report.
- Coalition Elections/Directors: The Coalition has sole responsibility for all aspects of the Coalition Board elections, including selection of the slate of officers, ballot preparation and mailing, ballot collection, ballot counting, and verification of ballot results as defined in the Coalition Bylaws.
- The Coalition is solely responsible for maintaining its own mailing address and, as is further detailed in section 11 of the MOU, notifying the City of any address changes in writing within 14 days of the change.
- Coalition Board Meetings: The Coalition has sole responsibility for all aspects of its Board meetings including: scheduling, drafting and posting agendas, taking minutes, and preparing Board packets.

B. The Coalition will become a Main Street America Accredited Member, meeting specific national standards and requirements. The Coalition will maintain in good standing the Main Street America Accredited Member status throughout the Term of the MOU. The Coalition will provide the City licensing access to the Main Street America program.

C. The Coalition will recruit, hire and retain its own personnel. In exchange for City financial assistance, the Coalition will hire a full time Executive Director / Downtown Manager to serve as the Executive Director for the Main Street America Program. The Executive Director / Downtown Manager reports directly to the Brentwood Main Street/Downtown Business Coalition Board of Directors, and is responsible for the implementation of Downtown projects, programs and special events. The Executive Director / Downtown Manager will support these efforts utilizing the California Main Street and National Main Street’s philosophy (Four Point Approach) as the foundation for a successful and vibrant Downtown. The Executive Director / Downtown Manager will serve as the central liaison and advocate for the Downtown, and will work closely with the California Main Street Association, National Main Street Association, City of Brentwood, Brentwood Chamber of Commerce, civic groups, Downtown stakeholders, as well as the community, in order to facilitate the completion of annual goals and activities set by the Board and the City.

The hired personnel will perform the following on behalf of the Coalition:

- Develop and maintain effective relationships with Downtown business owners, Downtown property owners, community groups, public officials, City staff and the public.
- Respond to and resolve sensitive inquiries within the Downtown.
- Make presentations to a variety of community groups, thereby promoting Downtown programs and events and developing and strengthening relationships with various organizations.
- Develop and maintain social media efforts including media announcement and marketing initiatives.
- Attend monthly Coalition meetings and report directly to the Board of Directors.
- Meet monthly, at minimum, with City representatives.
- Report to the City of Brentwood City Council and City staff, as requested.
- Attend training sessions/workshops/webinars related to California Main Street and National Main Street Associations.
- Oversee and administer complete oversight of special events and activities in the Downtown including coordinating a volunteer workforce and evaluating the work of assigned volunteers.
- Prepare, negotiate, review and administer contracts and grants for program operations; ensure that grant and budgetary guidelines are followed; coordinate with grant agencies to provide compliance reporting.
- Member advocacy and promotion/membership expansion.
- Accounts payable and receivables, membership dues and billing.
- Contribute to the overall effectiveness of the Coalition and Downtown Brentwood by developing and coordinating work teams/committees, and by reviewing, recommending and implementing improved policies and procedures.
- Conduct analytical studies within the Downtown; develop and review reports and findings; keep well maintained and accurate records and files.
- Maintain a Downtown property and business database.
- Ensure compliance with California Main Street and the National Main Street Associations' continued requirements for accreditation.
- Create revenue generation through event sales, sponsorships and other identified means of revenue development.

2. Membership:

The Coalition is responsible for determining annual membership dues/fees including what, if any, rights and/or privileges are associated with membership.

3. Fundraising, Events, Membership Dues and Fund Development:

The Coalition is primarily responsible for the selection, development, and implementation of all of its fundraising, events and fund development activities. This includes the completion of all administrative requests, forms, permits, and/or payment of various fees/charges required by the City and/or other County and State agencies, as necessary.

The Coalition agrees to research and enact fundraising options and financing programs to alleviate and/or remove the City's annual financial contribution by or at the time of expiration of this MOU. This may include funding sources from fundraising, events, membership dues or other forms of fund development. The City and Coalition will meet annually, at minimum, to evaluate fund development efforts in order to eliminate the City financial contribution.

4. Coalition Administrative Office and Destination Tourism Office:

The Coalition and City will partner to find a suitable office location for the Coalition and Executive Director / Downtown Manager during FY 2021/2022 in order to meet the requirements of the Main Street America program.

The Parties may, upon mutual agreement, amend this MOU or enter into other forms of agreement for the Coalition to open, manage, operate and promote a Downtown tourism destination office that is open to the City, Coalition, Coalition members and the visiting public during normal business hours conducive to tourism related operations. In exchange for City financial assistance to be approved under an amended MOU or separate agreement, the Coalition will assist the City in promoting regional and Downtown tourism, and will work with regional tourism agencies to attract visitors into the Downtown through the tourism office.

5. Performance Standards

The Coalition will meet certain performance standards to advance the goals of the City, which may include, but is not limited to:

- Review of membership program, membership tiers and fee structure.
- Increase businesses to memberships ratio and focus on membership diversity.
- Increase membership participation and buy-in with the Coalition Board.
- Host Coalition events to the benefit of its members and the City.
- Coordinate with the City for downtown improvements and improved downtown cleanliness.
- Review and implement the boundaries of downtown and the Coalition, including expansion of the downtown core to improve membership reach and drawing power of Downtown.
- Aim for a 100% retail building occupancy rate.
- Create and implement a marketing and social media program.
- Focus promotion, marketing and advertising to increase foot traffic and sales for members.
- Launch joint marketing tourism campaign with the City and affiliated partners, including Better in Brentwood and regional agritourism groups.
- Create a patriotic and holiday seasonal uniformed downtown experience along with the City.
- Promotion and preservation of the history of Downtown and the Brentwood community.

Any activity, function or service not specifically mentioned in Exhibits "A" or "B" are the responsibility of the Coalition, which can be changed upon a separate written agreement between the Parties.

Exhibit B City Responsibilities

1. Main Street America

The City will assist and support the Coalition in becoming a Main Street America Accredited Member, including providing City staff administration services, assistance with program accreditation fees and other administrative services to certify as Accredited status. The City will support the goals and objectives of the Coalition and that of the Main Street America program. The Coalition will maintain in good standing the Main Street America Accredited Member status.

2. Executive Director / Downtown Manager Position

The City will provide financial assistance to the Coalition for the hiring and employment of an Executive Director / Downtown Manager. The financial assistance provided by the City can be used for personnel costs including wages, salary, payroll, benefits, and/or other direct administration costs as deemed acceptable by the City, in an amount not to exceed the following per fiscal year:

July 1, 2021 to June 30, 2022 - \$50,000
July 1, 2022 to June 30, 2023 - \$70,000
July 1, 2023 to June 30, 2024 - \$70,000

The Coalition will invoice the City monthly for actual costs incurred and the City will provide payment on a reimbursement basis. The Coalition acknowledges that City financial support is not guaranteed following expiration of this MOU.

3. Coalition Office and Destination Tourism Office:

The Coalition and City will partner to find a suitable office location for the Coalition and Executive Director / Downtown Manager during FY 2021/2022 in order to meet the requirements of the Main Street America program.

The Parties may, upon mutual agreement, amend this MOU or enter into other forms of agreement for the Coalition to open, manage, operate and promote a downtown tourism destination office that is open to the City, Coalition, Coalition members and the visiting public during normal business hours conducive to tourism related operations. In exchange for City financial assistance to be approved under an amended MOU or separate agreement, the Coalition will assist the City in promoting regional and Downtown tourism, and will work with regional tourism agencies to attract visitors into the Downtown through the tourism office.

The City owns and operates real property and buildings in the Downtown core. Should the Coalition occupy a City owned facility, the City may require execution of a separate lease agreement to be later approved by the City Council.

Any activity, function or service not specifically mentioned in Exhibits "A" or "B" are the responsibility of the Coalition, which can be changed upon a separate written agreement between the Parties.

Exhibit C
Main Street America – Downtown Brentwood Coalition Maps
C-1 Downtown Specific Plan Boundary
C-2 Downtown Brentwood Coalition Membership Boundary

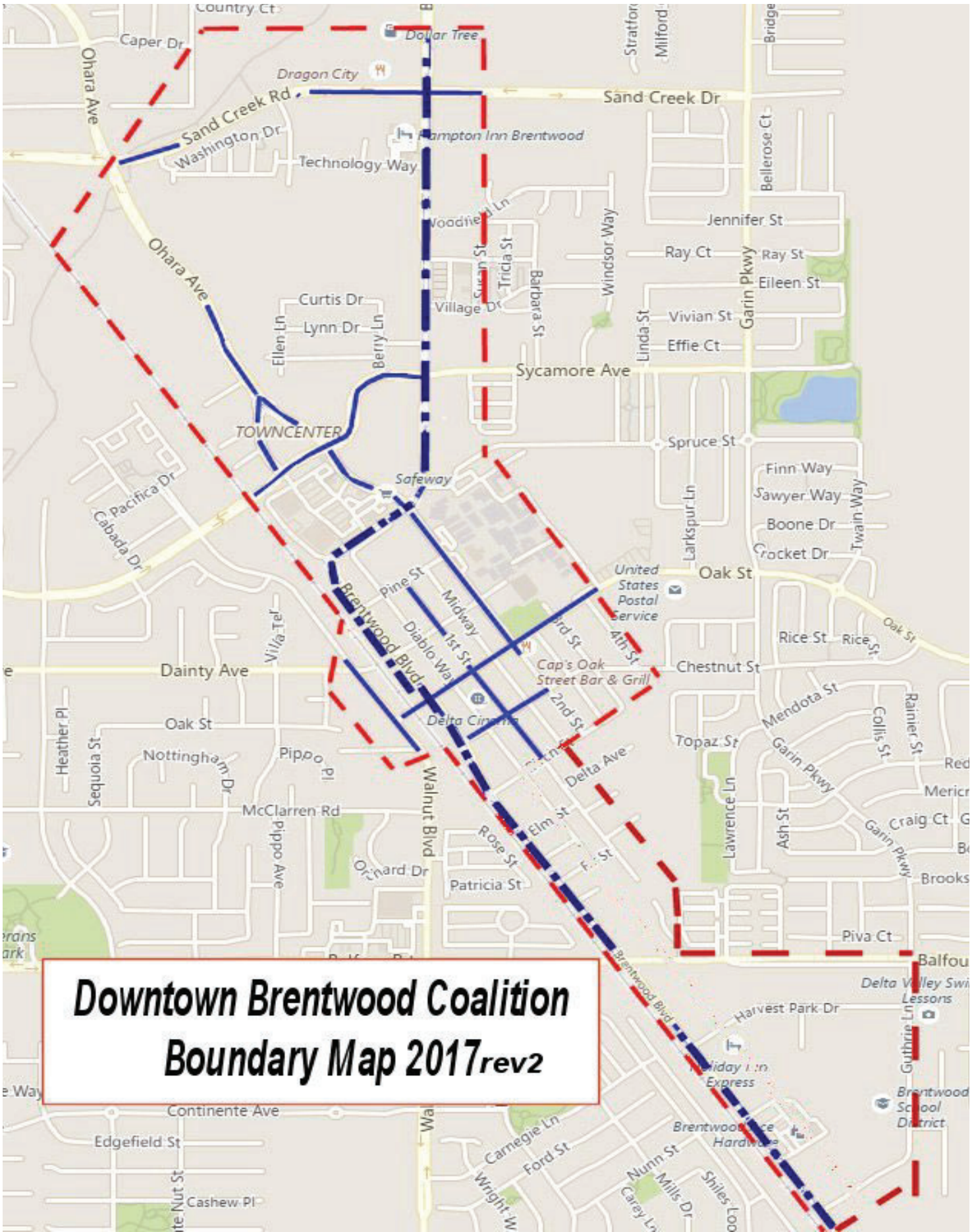
C-1 Downtown Specific Plan Boundary

INTRODUCTION



DOWNTOWN SPECIFIC PLAN AREA

C-2 Downtown Brentwood Coalition Membership Boundary



**Downtown Brentwood Coalition
Boundary Map 2017rev2**