



MBTA Zoning Frequently Asked Questions

The MBTA Zoning Task Force is providing these often-asked questions and answers to help explain the State's MBTA Communities Zoning Law (MGL Ch. 40A, S. 3A). The law requires that cities and towns served by the MBTA must enact zoning by-laws to allow multifamily housing as of right. The following questions and answers are meant to help residents understand what the new law means for Manchester and some alternatives that the MBTA Zoning Task Force is exploring. The most current information can be found on the MBTA Zoning page on the Town website. Community participation is encouraged.

MBTA Zoning

Frequently Asked Questions

1. What is the MBTA Zoning Law? What is its objective?

The new Law was passed by the Legislature in 2021 and codified as Section 3A of MGL c. 40A. The stated goal is to help address the severe shortage of housing in the State by requiring cities and towns that are served by the MBTA to create a zoning district that permits multifamily residences as of right. The focus is to allow housing in proximity to train stations to encourage transit-oriented development (“TOD”), which provides housing that is less reliant on automobiles.

Section 3A. (a)(1): *An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multifamily housing is permitted as of right; provided, however, that such multifamily housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.*

The State, through the Executive Office of Housing and Livable Communities, has issued a set of Guidelines to help municipalities achieve compliance with the new zoning law.

The Guidelines are posted on the Town’s [MBTA Task Force](#) web page and at Section 3A Guidelines | [Mass.gov](#)

2. What is Multifamily Housing?

We often think of multifamily housing as large apartment complexes or condo communities. But they don’t have to be large at all. Multifamily housing is defined, by the law, as a building with three or more residential units, or two or more buildings on the same lot with more than one residential dwelling unit in each building. To put it more simply, a building with three residential units or two duplexes on a single lot are both multifamily properties.

3. What Does “By Right” or “As of Right” Mean?

By right is a term used in zoning. It means that a proposed use of property is allowed under the provisions of the zoning laws without the need of a special permit, variance, or any other discretionary review. For example, in every residential zoning district in the Town of Manchester-by-the-Sea, you can build a single-family home by right. However, there are still many rules that limit what can actually be built. First, and most important, you must get a building permit from the Building Inspector. This means you must comply with all building codes. You also must comply with restrictions on lot size, building height, distance to the property boundary, and lot coverage. There are also rules about septic systems, availability of utilities, building near wetlands, building in water resource protection districts, and other rules to protect natural resources. By right does not mean that you are free to build whatever you want.

4. How big does the MBTA Zoning District(s) have to be?

For most municipalities, the new MBTA Zoning District/s must total at least 50 acres. However, the State has determined that Manchester’s MBTA Zoning District/s needs to total a minimum of 37 acres. The size of the district takes into account unique geographic constraints including the proximity of the train station to the harbor.

5. What exactly does the law require for the MBTA Zoning District(s)?

The Law requires that multifamily housing be allowed as of right within the new MBTA Zoning District with a minimum overall gross density of 15 residential units per acre. (Some existing apartment complexes in Town have higher densities.) There is no requirement that new units have to be built by property owners; the law only requires that multifamily housing be allowed as of right.

6. What is an example of 15 units per acre?

The condos and apartments at 10-12 Summer Street, next to Standleys Garage, are denser than 15 units per acre. 10-12 Summer Street contains 39 residential units on 2.2 acres, so the density is 17.73 residential units per acre.

You can get an idea of the size, number of units, and density of other existing multifamily properties in Town by reviewing the Task Force’s “Density Walk – Self Guided Tour” on the Town website, and by watching the, 15 Minute, “Density Walk” video. ([Linked at end of FAQ](#)).

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Below are some examples of multifamily dwellings that currently exist in Manchester:



12 Summer Street (39 units on 2.2 acres- density of 18 units per acre)



1-3 School Street (13 units on .14 acres- density of 92 units per acre)



Powder House Lane (29 units in 2 buildings on 2 acres- density of 15 units per acre)



2 Beach Street (Mixed commercial with 7 units on .18 acres – density of 39 units per acre)



4 & 6 Church Street (6 Units total on .37 acres - density of 16.2 units per acre.)

7. How many residential units are required by the Law?

The State lists 559 units. With a minimum density of 15 units per acre, the 37-acre MBTA zoning district(s) will have the capacity to theoretically contain 555 residential units ($15 \times 37 = 555$, likely rounded up for a tiny fractional acreage requirement). To provide some context, 559 residential units represents about $\frac{1}{4}$ of Manchester's existing housing stock, which is approximately 2,400 residential units. Of these 2,400 units, over 340 are

in buildings that meet the state's definition of multi-family housing. Approximately another 280 units are in 2-family buildings.

8. How many residential units might be built within the MBTA Zoning District(s)?

Since many residential units already exist in multi-family buildings within a half-mile of the train station, we should not expect the construction of 559 additional NEW dwelling units. 559 is the total number of residential units to be allowed within the 37-acre MBTA zoning district(s), not the number that would necessarily be built. For example, if the area around 10-12 Summer Street is zoned for multi-family dwellings at a maximum density of 15 units per acre, we would expect no new units to be built since the existing housing slightly exceeds this density. Additionally, most of the parcels of land in the downtown area are too small on their own to support any large multi-family development and assembling enough small adjoining lots would be logistically and financially challenging for a developer. However, a number of single and two-family homes within the circle are large enough to accommodate 3 or 4 units which would represent an increase in new units.

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9. Must All 37 Acres be in a Single MBTA Zoning District?

No. There can be multiple districts with different density requirements as long as all districts total 37 acres and the overall gross density is at least 15 residential units per acre. Each separate district must contain a minimum of 5 acres. However, at least 40% of the total acres (14.8 acres) must be within the half mile radius from the train station.

10. What land is contained within the half-mile circle around Manchester's train station?

A half-mile from the station extends to Singing Beach to the southeast, to the far end of Bennett Street to the west, to Newport Park along Pine Street to the north, and to the High School and Lincoln Street to the northeast. See the red circle on the map to the right.

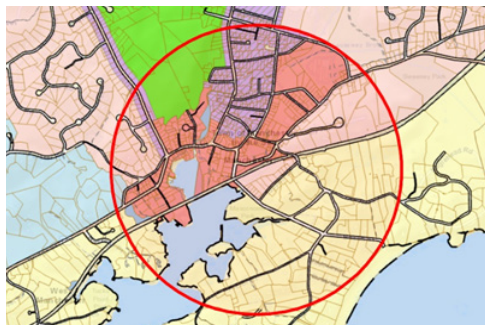
11. What zoning districts are within the half mile radius?

There are 4 different zoning districts represented within the half-mile circle:

- The Residential D districts are shown in purple. The D-1 district allows single and 2-family homes by right with a minimum lot size of 6000 square feet. The small bit of the D-2 district along Pine Street requires a special permit for 2-family homes.
- The General District is shown in darker pink. It allows commercial uses as well as single and 2-family homes by right on a minimum 6,000 square foot lot.

- Parts of Residential District A appear in pink. Zoning allows only single-family homes on a minimum lot size of 1 acre.
- Parts of District E are seen in yellow. Zoning is limited to single-family homes on a minimum lot size of 2 acres.

The green area within the half-mile represents the Powder House Hill Reservation.



12. If 14.8 acres of the MBTA zoning must be within one half-mile of the train station, where can the Town locate the other 22.2 acres of MBTA zoning?

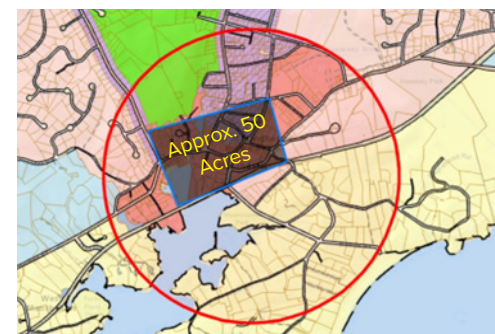
Anywhere, with a few exceptions. We could choose to extend the entire remaining MBTA Zoning District beyond the half-mile, or we could place a 14.8 acre MBTA district and add a few smaller districts of 5 acres or more all within the half mile. However, the Law requires that certain land be excluded from Manchester's 37 acres: bodies of water, wetland resource areas, deeded conservation land, land used for utility services, streets, publicly-owned parks and schools.

13. Can the MBTA Zoning District(s) be an overlay district? What does that mean?

It can be an overlay district or districts. An overlay zoning district superimposes an additional set of regulations over existing zoning districts. The basic rules for the underlying districts remain unchanged, while special rules are applied to projects that are built according to the overlay district. Manchester currently has several such districts including a "Water Resource Overlay District" that includes additional regulations for protecting the water supply. Any other use besides multifamily housing would have to conform to the underlying zoning regulations.

14. How big would an MBTA district of 37 acres be compared to the area of land depicted in the half-mile radius?

The shaded rectangle (this is just an example) above contains around 50 acres. Excluding the portion of the inner harbor and wetlands would reduce the size to 35-40 acres. A rectangle 40% of this size would contain more than 14.8 acres, which is the minimum amount required within the half-mile circle.



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15. Does the Town have the necessary infrastructure (water, sewer, schools, etc.) to support these units?

The short answer is a provisional yes. School enrollment is declining and has been for several years so there is current capacity for new students in the MERSD School District. According to our DPW, initial estimates for maximum build out in response to the MBTA zoning requirements could increase the population by up to 1500 additional residents over time. Assuming all of those residents are on Town water and sewer, and assuming a basic figure of 65 gallons per capita per day, the increase in capacity would be approximately 97,500 gpd. This figure combined with our 2022 daily average use would put the Town at approximately 732,500 gpd water and 468,500 wastewater (101.7% and 69.9% utilized respectively). As described above these numbers would be considered conservative assuming no additional improvements implemented within the system. Even then the Town could reasonably accommodate such an increase.

Furthermore, if there isn't enough capacity in future years, the Guidelines further state that, "While the zoning must allow for gross average density of at least 15 units per acre, there may be other legal or practical limitations, including lack of infrastructure or infrastructure capacity, that result in actual housing production at lower density than the zoning allows."

16. Can the Town limit new development to senior housing or smaller units?

No. The new zoning bylaw cannot exclude family housing by imposing age restrictions or limiting the size of units. However, a development proposal with smaller units or occupancy restrictions such as senior housing would certainly be allowed.

17. Won't this cause the Town to fall even further behind in providing affordable units for the Subsidized Housing Inventory (SHI) making us even more vulnerable to 40B developments? Can the Town require that units be affordable and listed on the SHI?

The state's guidelines allow MBTA zoning to require up to 10% affordable units. If an economic analysis determines that up to 20% could be affordable without being a deterrent to the creation of multi-family units, then the Town may mandate a requirement of up to 20% affordable units in any MBTA district. The Task Force has requested and received a proposal for such an economic analysis to justify the 20% affordability requirement and is pursuing this option.

18. Can we count existing residential units within a new district toward this total?

The law does not consider how many

homes currently exist on each parcel of land in Town. Instead, the law looks at how many multifamily units could theoretically be allowed as of right. However, the number of existing units within the new district(s) reduces the potential for new additional units to be built.

19. Does Manchester's zoning bylaw currently allow any multifamily housing?

The Law defines multifamily housing as a building with 3 or more residential units, or 2 or more buildings on the same lot with more than on residential dwelling unit in each building. Neither is currently allowed by right in any zoning district. However, within the General District, a single dwelling may be converted to a 3-family residential building by right as long as the building is not enlarged and there is off-street parking for 5 cars.

20. Are wetlands and flood plains excluded from the area of the MBTA Zoning District(s)?

Yes. The Task Force has not included any wetlands or flood plains in the proposed MBTA Zoning District(s). Furthermore, there is no exemption from the regulation of the Wetlands Protection Act. The Conservation Commission will continue to have jurisdiction over any construction that might impact sensitive wetlands or is within the buffer zone of a wetland.

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21. Can the Town have any control over the design and layout of new projects in the new MBTA Zoning District/s?

Yes. Reasonable requirements and development design standards are allowed. The Town's MBTA zoning may include requirements for off-street parking and setbacks, for example. In addition, the Guidelines state that Site Plan Review may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties. The Task Force convened a subcommittee of residents with architectural experience to draft preliminary Design Standards to be applied for renovations and new buildings in established residential districts. These Design Standards would apply only to multifamily projects constructed under MBTA zoning.

22. Can we require that new projects maintain commercial and retail uses on the ground floor?

No, the MBTA law does not allow us to require mixed use buildings in MBTA Districts. They can be developed, but not required, where the underlying zoning district allows for commercial uses. The Task Force has intentionally avoided zoning major portions of the downtown that include a large number of commercial businesses into one of the MBTA zoning districts to avoid the loss of retail space.



*Example of mixed use at
4 Summer Street*

23. Can we use MBTA Zoning to prevent historically significant structures from being demolished or significantly altered?

The Task Force has avoided including any buildings of historic significance and the local Historic District in MBTA zoning districts to minimize the risk of altering or demolishing these structures.

24. Who makes the decision to adopt the new zoning?

The Task Force has been charged with preparing a zoning proposal which complies with the MBTA Zoning Law. This proposal is being reviewed with the Planning Board prior to being submitted to the Select Board to be placed on the Fall Special Town Meeting Warrant. Residents at Town Meeting will then vote on the proposed zoning amendments.

25. What can residents expect between now and the Fall Town Meeting?

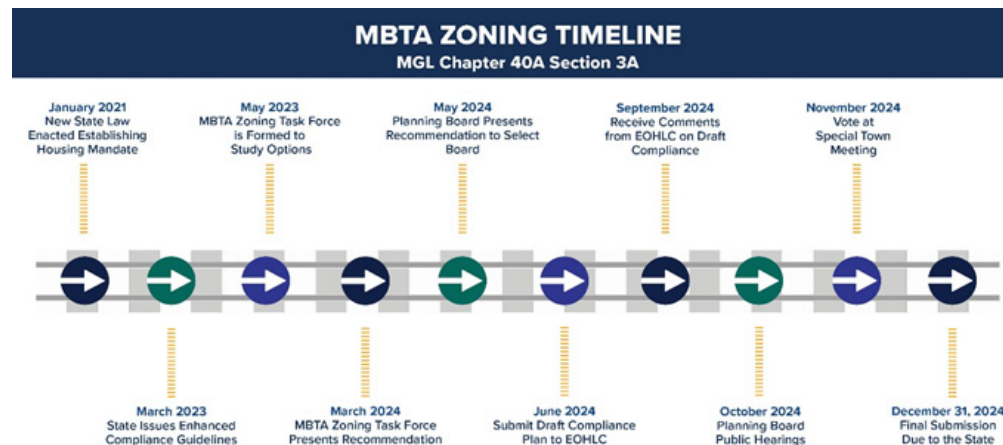
Over the next six months, the Planning Board and Task Force will continue to hold in person and virtual Public Forums regarding the proposed MBTA Zoning Districts. In addition, once MBTA Zoning amendments are drafted, they will be sent to the Municipal Law Unit of the Attorney General's Office and to the Executive Office of Housing and Livable Communities (EOHLC) for review.

The Attorney General's Office will verify that our proposed zoning amendments align with the MBTA Zoning Law and with our State Constitution. EOHLC will confirm that our MBTA zoning amendments comply with the specific requirements of Section 3A of MGL c. 40A and the accompanying Guidelines. After receiving input from the Attorney General's Office and EOHLC, the Planning Board will make any necessary changes to the MBTA Zoning amendments and hold a Public Hearing to discuss amendments with residents.

Prior to the Special Town Meeting in November, the Planning Board will present the MBTA Zoning amendments to the Select Board for inclusion as Articles in the Warrant for Town Meeting. Residents will then debate and vote on the Articles at the November Town Meeting. *(See Timeline on page 6.)*

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26. Has the MBTA Task Force identified 37 acres within Manchester for possible MBTA Zoning?

Yes. The Task Force identified possible areas in Manchester for inclusion in MBTA Zoning Districts and presented them on March 25, 2024, to the Planning Board for initial consideration. (See maps on the last page.)

- Maintain small scale and a variety of architectural style.
- Reduce the number of new incremental residential units that would be allowed.

(Complete list of the Guiding Principles can be found on the Town website. Link on last page.)

27. What criteria did the Task Force apply to identify these particular areas?

The Task Force voted to apply a series of “Guiding Principles” to areas of Town under consideration in January 2024. Those Guiding Principles are:

- Minimize potential changes to Town’s historic character and current zoning.
- Preserve the Town’s businesses and restaurants.

28. What happens if the Town fails to comply with the MBTA Zoning Law?

Manchester has until December, 31, 2024 to enact amendments to our Zoning By-Law to comply with Section 3A of MGL c. 40A, the MBTA Communities Law. If the amendments do not pass at our November Town Meeting, then Manchester will be in violation of the Law, as of January 1, 2025. Violation of the Law will result in the loss of certain State Grants and may result in legal action by the State against the Town.

Specifically, the Law states that MBTA communities who are in violation of the Law will not be eligible for funds from the following State funds:

1. The Housing Choice Initiative
2. The Local Capital Projects Fund
3. The MassWorks infrastructure program
4. The Housing Works infrastructure program.

In addition, the Guidelines require that the following discretionary grant programs will take compliance with the law into account when making grant award recommendations:

1. Community Planning Grants
2. Massachusetts Downtown Initiative
3. Urban Agenda
4. Rural and Small Town Development Fund
5. Brownfields Redevelopment Fund
6. Site Readiness Program
7. Underutilized Properties Program
8. Collaborative Workspace Program
9. Real Estate Services Technical Assistance
10. Commonwealth Places Program
11. Land Use Planning Grants
12. Local Acquisitions for Natural Diversity Grants
13. Municipal Vulnerability Preparedness and Planning and Project Grants.

Finally, the Attorney General has stated: *“All MBTA Communities must comply with the Law. ... Communities that fail to comply with the Law may be subject to civil enforcement action. Non-compliant MBTA Communities are also subject to the administration consequences of being rendered ineligible to receive certain forms of state funding. Importantly, MBTA Communities cannot avoid their obligations under the Law by foregoing this funding. The Law requires that MBTA Communities “shall have” a compliant zoning district and does not provide any*

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28. Continued from page 6.

mechanism by which a town or city may opt out of this requirement.

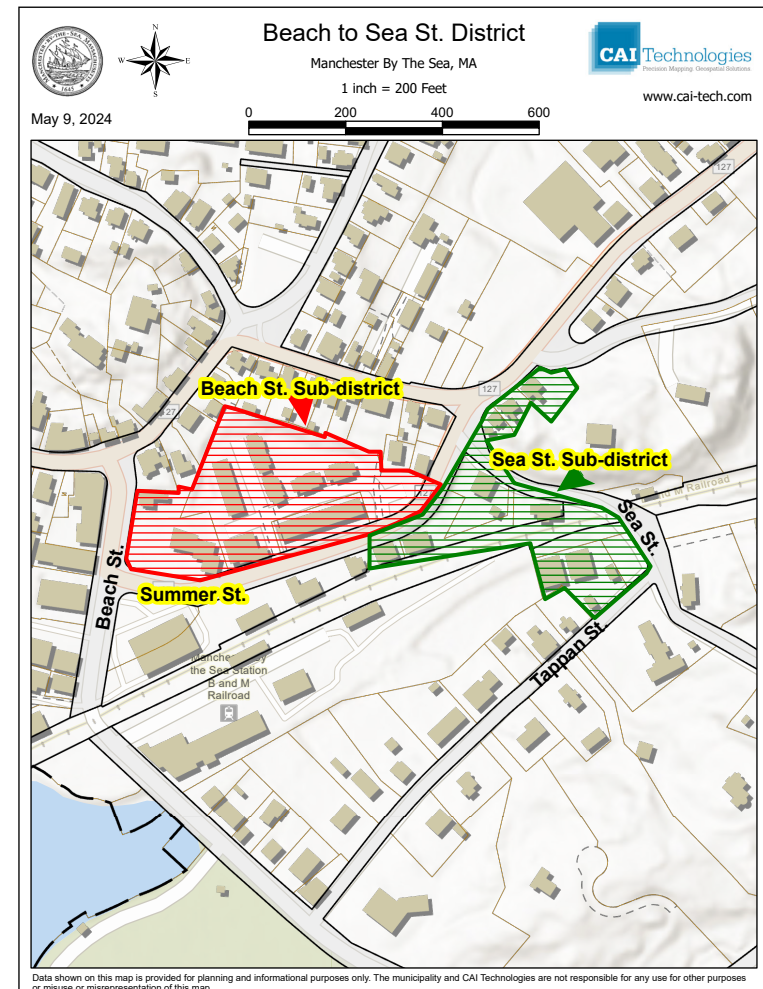
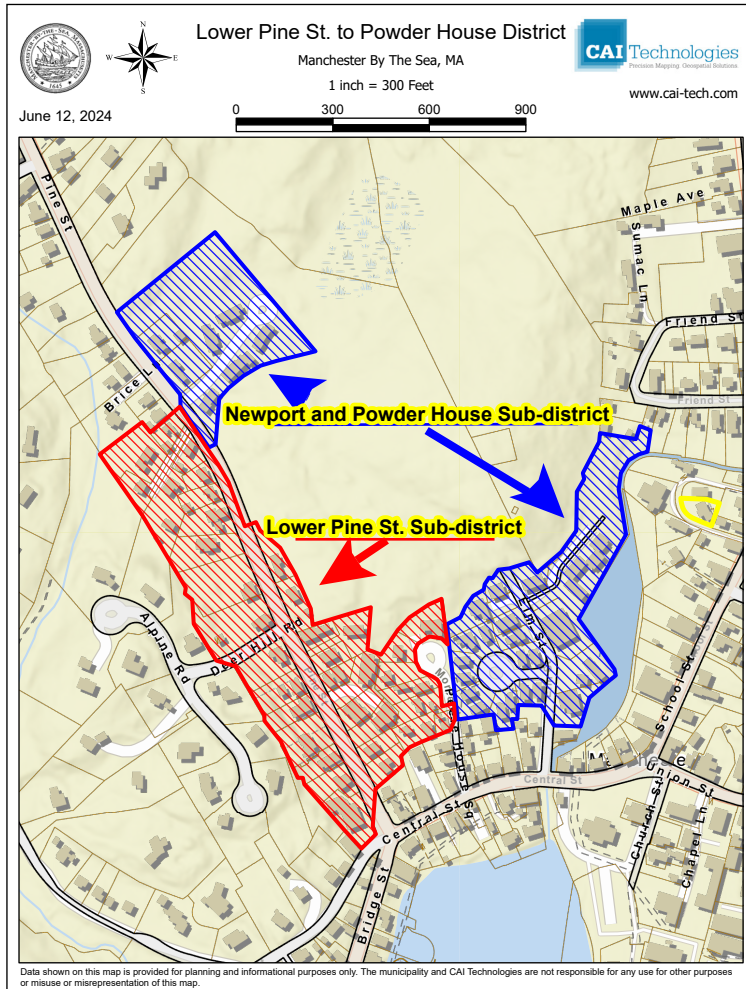
MBTA Communities that fail to comply with the Law's requirement also risk liability under federal and state fair housing laws. The Massachusetts Antidiscrimination Law and federal Fair Housing Act prohibit towns and cities from using their zoning power for a discriminatory purpose or with discriminatory effect. An MBTA Community may violate these laws if, for example, its zoning restrictions have the effect of unfairly limiting housing opportunities for families with children, individuals who receive housing subsidies, people of color, people with disabilities, or other protected groups.

All information about MBTA Zoning in Manchester-by-the-Sea can be found by visiting manchester.ma.us/774/ MBTA-Zoning or use the QR code.



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Proposed Zoning Districts



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