Massachusetts Moderators Association

2040 "Town Meeting of the Future" Working Group Report

Interim Report and Discussion Draft

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2040 Town Meeting of the Future Working Group

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I. INTRODUCTION

At the 2017 Annual Meeting of the Massachusetts Moderators Association ("MMA"), the 2040 TM of the Future Working Group was charged with the mission:

> To ensure the future relevance of Town Meeting by studying and sharing best practices and new ideas for improving the structure of and citizen engagement in the Town Meeting process, so that Town Meeting can continue to be a vibrant and effective form of democratic local governance in Massachusetts.

At the 2018 Annual Meeting, the 2040 Working Group reported on (1) citizen engagement pre-Town Meeting, and (2) possibilities for remote participation in Town Meetings. The 2018 Report and supplementary materials may be downloaded here. Upon the Working Group's recommendation, the MMA directed:

> **That the 2040 Working Group continue its work with the specific objective of producing a "white paper" or similar study document, to be published no later than in 2020, that discusses the opportunities for and challenges to remote participation in Town Meetings and identifies potential technology approaches and applications that Towns may want to consider using on a trial basis.**

This document provides an interim report on the work accomplished to-date towards completion of the requested White Paper. We share the results of some preliminary research and identify critical questions that we believe the White Paper should address.

The 2040 Working Group began this round of work by returning to the predicate question in its prior report of why one should look at remote participation. There was universal affirmation by the members that preparation for how Town Meeting may look and act in the near- and intermediate-term future remains warranted. As well, moderators report they have received more requests for some form of participatory opportunity in Town Meeting from various constituencies including seniors unable to travel, physically challenged individuals, military members deployed, parents with childcare obligations, *etc*. Specific request for information on the matter has come from a member of the Massachusetts legislature to the MMA and at least two bills have been filed specifically to allow an expansion of voting rights at Town Meeting.

These requests, we believe, are borne of 21st century participatory expectations by consumers – read voters – and the abilities afforded by present technology capabilities and increasing demand for democratic engagement. As citizens observe their elected and appointed officials participate remotely in board and committee meetings, and as they themselves participate in group video conferences and other large group discussion and decision sessions in their work and personal lives, we expect that requests to apply these same tools to Town Meeting will continue to grow.   The MMA has a choice: it can wait for these pressures to result in public policy discussions and then react (or not); OR it can begin to consider the questions now so that it can help shape the discussions to come. The 2040 Working Group firmly endorses the latter approach.

We strongly iterate that the principal interest of the MMA, and the 2040 Working Group, is to retain the authority and efficacy of Town Meeting as a legislative body for town government. We do not wish

that the Town Meeting form of government become an anachronism.   Nor do we desire to dilute its obligation to be a deliberative body.   Town Meeting is a purposefully contemplative event, not an election, and no expansion of remote participation should turn it into a process that looks like one.

Any and all efforts to expand remote participation must guarantee the preservation of Town Meeting's foundation as a vehicle for participatory democracy. Town meeting needs to be prepared to refresh and sustain itself as a vibrant, modern, and forward-looking form of government that embraces changes in a contemporary society. Such challenges have presented themselves in the past as Town Meeting adapted to then-modern presentation options from poster board to PowerPoint, taped recording of deliberations to broadcast and live streaming, and shouted ayes and nays to electronic voting.

This interim report outlines background matters, operational challenges, technology options, security interests, legal concerns, legislative considerations, and myriad policy questions that arise from the expansion of remote participation. We deliberately pose many questions while suggesting very few answers. Since we have looked at this problem from multiple perspectives, the same or similar questions appear in multiple places. For example, the practical question of "What happens if the technology link fails?" appears in the legal, technology and security, and policy considerations sections.

We invite your review and considered commentary. **In addition to a live discussion of this report at the November 1 Annual Meeting, MMA members may comment on the report by joining one of the video-conferences to be scheduled in November and December, and/or by adding written commentary to the report available [here](#).**

Following discussion of this interim report at the 2019 Annual Meeting and online, we expect the 2040 Working Group to continue toward the goal of producing a White Paper in 2020—one that will outline as many of the important questions as we can identify AND answer at least some of them with our collective best advice to our fellow citizens.

Respectfully Submitted,

2040 Town Meeting of the Future Working Group

II. Opportunities

A. Early experiments

1. North Andover – Remote Questions & Remote Voting Straw Poll

North Andover has been a laboratory for testing remote participation for the past six years in its Open Town Meeting. It has done so in iterative steps. It has allowed questions to be presented by citizens outside the venue during this entire period. In the last year, over two Town Meetings, it has experimented with remote voting.

Remote Questions

The moderator has instituted a system that provides the opportunity for citizens to text and email questions into the meeting while it is sits in active deliberation. The premise is the recognition that while all power is in the room, all knowledge may not be in attendance. In its initial year the opportunity to post questions was limited to Town Meeting evening. The second year it was expanded to the week prior to Town Meeting. Three years ago, it was opened to the full two weeks prior to Town Meeting. Procedures for accessing the on-line email/text forum in North Andover are published before the access period opens on the Town's web site. The only reason phone calls are not an option is because mobile service in the venue is unreliable.

There is a three-step authentication process. When a citizen wishes to ask a remote question, they are directed to a link or text a dedicated Google phone number. When linked or texted it opens a web form that requires name, address, and phone number. The form also requires an attestation that one is a registered voter in North Andover. A volunteer group, the Remote Participation Team, made up of three to four individuals appointed by the moderator and a representative provided by the Town Clerk, reviews each web form, checks the voter file to see if one is a registered voter, and calls the person to discern they have in fact sent in a remote question. Upon proof of each their question is screened in. That same team makes the unilateral determination at Town Meeting whether the question has been asked at the meeting and only then, if it has not, will a member of the Remote Participation Team come to the microphone, declare it a remote question, state that person's name and address then ask the question. Commentary or motions are not allowed.

The meeting is forewarned that questions in the room take precedence and that the moderator has no influence on what questions are asked. There may be dozens of questions texted or emailed in for any one meeting but generally only one or two are deemed to be presented at Town Meeting. In at least one case the query, when presented, changed the anticipated result of the deliberation on the matter under discussion. The program has become second nature and is a regular practice and expectation.

Remote Voting Straw Poll

In response to the 2040 Committee challenge in 2018 to test expansion of remote participation activities North Andover chose to test remote voting. It was a natural expansion of its Remote Questions experience and was additionally prompted by frequent request, particularly after a large Town Meeting where nearly 3000 attended, why there could not be remote voting.

We, the 2040 Working Group, believe the deliberative nature of Town Meeting is sacrosanct. Any attempt to provide remote voting must ensure that a voter is at least as engaged, or not, as any other participant in the room. While this is difficult to test, a common query is whether remote voting results would be appreciatively different that those judgments made by citizens in the room.   The experience over the past two Town Meetings in North Andover may be helpful.

The moderator allowed a version of remote voting in the community's most recent Annual Town Meeting and in a subsequent Special Town Meeting. It is noted prominently that no such remote vote would count and that all citizens were encouraged to attend the meeting where their vote would in fact be counted. The program was specifically characterized as a "Straw Poll" to measure opinions of those who chose to participate but clearly acknowledged that it was a test of possible future remote voting.

The authentication process provided that a citizen clicks a link that offered the opportunity to vote, and attest that they were a registered voter. The system would then prompt a private question as to birthdate that is not publicly published information that matches with the Secretary of State's Central Voter Registry. If that match is made then the entire warrant is presented to the citizen who can choose to answer yes, no or leave blank a voting button next to the warrant question. No attempt was made to make it a real-time process. No motions were published in real time to those voters who accessed the opportunity. Amendments or other changes were not captured. The "straw poll" of voters tested only level of interest and whether the opinions cast remotely would be similar in sentiment to the results in the meeting.

Sixty individuals voted remotely in the ATM with an in the room population of around 400 - 500. Seventy-eight voted remotely in the STM where 1100 voters with actual voting power were in attendance. A small number of remote voting participants were in the room and chose to participate for their own interests to "try it out". Results were published after adjournment of the meeting and were not calculated or shared at the time of the meeting. The votes were aggregated and reported anonymously.

Full comparative results for both meetings are attached. There was complete correlation between the straw poll remote voting survey of citizens and the actual results of the deliberative Annual Town Meeting. The two hand counts taken showed the same results as town meeting, albeit with slightly differing percentages. The STM dealt with two specific subjects. There was an absolute correlation on the first subject and decidedly differing opinions, in fact opposite results, on the second matter considered by STM.   We leave the meaning of this to the reader.   It should be noted that the reason why an individual chose to participate remotely rather than come to the meeting, especially knowing that their opinion would not be counted, was not captured.

2.   Carlisle – Remote Location with Full Participation

On October 7, 2019, the Town of Carlisle conducted a Special Town Meeting, which included the participation of 13 registered voters in a conference room at Benfield Farms, a senior living community located about two miles from the main auditorium. Based on a review of the statute (MGL c. 39, s. 10), Town Moderator Wayne Davis had concluded that the session could be conducted under the same legal aegis as has long been used in Carlisle and other towns for "overflow" rooms:

The town meeting may be held in one or more places; provided, that if it is held in more than one place, the places are connected by means of a public address system and loud speakers so that the proceedings in all such places may be heard and participated in by all the voters present therein.

The Moderator consulted Town Counsel, who concurred with this view. *For detailed discussion of the legal analysis, see Section III below.* The Moderator took these additional preparatory steps:

- Requested the Board of Selectmen to include the remote location in the Warrant;
- Worked with local community cable television personnel to determine the technical set-up;
- Arranged with the Town Clerk to appoint a teller to conduct voter check-in and to count votes;
- Appointed an Assistant Moderator to preside in the remote room;
- Arranged for a technically proficient volunteer to operate a laptop computer in the remote room.

The conference room was equipped with a television that could receive the live feed cable broadcast of the proceedings and two computers (a main and a backup) equipped with WiFi connectivity and the Skype video conference call application. Had the digital feed failed, the backup plan was to connect via telephone.

The Assistant Moderator was able to communicate privately with the Moderator via the chat function, including notifying the Moderator if a citizen wished to address the Meeting. If either the Assistant Moderator or a citizen's remarks needed to be heard by voters in the main auditorium, the Moderator asked the audio engineer in the main auditorium to turn on the audio feed from the remote location. Thus, the voters in the remote location could see (via cable) the speakers in the main hall, but those in the main hall could not see those in the remote location. The Moderator had previously determined that this set up met the requirements of MGL c. 39, s. 10, which requires only audio. The Moderator had determined not to attempt the video feed, due to equipment constraints and added technical complexity. However, this capability will be added in the future.

There was a quorum in the main hall. Note that MGL c. 39, s. 10 is silent as to whether voters in a remote location can be counted as part of a quorum, whereas the Open Meeting Law (MGL c. 30a, s. 20) does require a quorum to be "physically present at the meeting location" [s. 20(d)], except in the case of a local commission on disability [s. 20(e)].

The set-up worked well, except for a 20-30 second time delay between the main hall and rebroadcast to the remote location via the cable TV feed. For future meetings, two-way video will be enabled, and adjustments made to eliminate or substantially reduce the time delay.

Participants at the remote location reported positively on the experience and appreciated the opportunity to participate. A few voters in the main hall commented positively about the innovation afterwards to the Moderator; no negative concerns were raised by anyone in the town.

After this experiment was reported on Gavel Line, one commenter wondered whether concerns had been raised about whether this represents a "slippery slope" and any potential unfairness, *e.g.,* "Why this location and not other possible locations?" The Carlisle Moderator did not hear this concern from anyone in town, and the only other possible location is some senior living apartments literally across the

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street from the school. However, this could be an issue for larger towns and suggests other challenges of inclusivity, as are discussed in Section VI below.

Another question raised was the adequacy of backup communications and what would happen if the communications link had been lost completely. The Moderator had not thought through that worst-case scenario in advance, but fortunately did not have to face it on the fly.   The question is discussed in more detail in Section III *below*.

3.   Middlesex, VT Call-in Participation

For more than a decade this small community has allowed voters to participate remotely. The procedures utilized are attached in the appendix. In short, in Middlesex, VT a citizen can participate in Town Meeting even if homebound due to illness, or abroad in the military.

Volunteers on what they call the Solutions Committee have made it possible for Middlesex voters in remote locations to participate in town meeting. The stated goal of the project is "to allow participation by those who physically cannot attend (for instance, due to mobility issues or because they are out of town due to public service) while maintaining an efficient and vibrant Town Meeting for those who are in the meeting room."

Connection is made via phone and internet that allows remote participants to be able to see and be seen, hear and speak to the assembly from afar, and vote in show-of-hands and voice vote. Volunteers help with any equipment or set-up needs to the point of providing computer access.

The 2040 Committee has spoken directly with the moderator and Town Clerk and, as far as we and they know, Middlesex is the only community offering full remote participation. The community has no more than one or two participants on an annual basis and no specific proof of disability or rationale is required. It is a very small community of 1700 with participation in Town Meeting generally under 100. Its small size affords a level of comfort as to authentication of a voter and some level of confidence as to voter participation and that a vote is not being manipulated in some way.

This extension of remote voter participation is not done with specific legal sanction. No section of Vermont law or regulation allows or disallows the program. It is done openly with knowledge of the Secretary of State and Attorney General who have not provided specific comments on the program. The Vermont Municipal Assistance Center has written about Town Meeting in a Digital Age, (see addendum) offering both a template and commentary on implementation of a remote voting program by other communities. We and Middlesex officials are unaware that any other Vermont community provides this service.

B. Currently available technologies

In this section, we identify several available technology offerings that may be relevant to the ability to conduct Town Meetings with remote participation. These are offered to suggest what is currently possible without the need to speculate about technology advances. The 2040 Working Group has **not** determined what the technical requirements are for enabling remote participation by individuals, and so has made no determination that any existing technologies would suffice. We do believe, however, that

a look at what *is* currently available suggests that the needed technology will become available, and a lot sooner than 2040.

An exhaustive search and review have not yet been conducted. The mention of following products is not an endorsement or confirmation of their claimed functionality or suitability.

1.   Remote voting via smartphone

A minimum (though not necessarily sufficient) requirement for remote participation is that remote Town Meeting members be able to vote via a means that validates their identity, records their vote, and is secure. Several currently available platforms claim to offer those capabilities.

Voatz, Inc. (www.voatz.com) offers what it calls a "mobile elections platform that makes it possible to vote from a mobile device by leveraging the security built into the latest versions of smartphone technology, and the immutability of the blockchain." According to the firm's website, "Since June 2016, more than 80,000 votes have been cast on the Voatz platform across more than 30 elections. Voatz has experience working with both major political parties, churches, unions, universities, towns, cities, and states, all in the effort to make it safe, convenient and easy to vote."

The Voatz application has been used on a pilot basis by Hopkinton, Millis and Norwell for electronic voting at Town Meetings. From a within-the-hall perspective, the main difference between Voatz and most other electronic voting systems currently in use in Massachusetts is that it does not require a dedicated device (*e.g.,* a "clicker"). Instead, voters download the Voatz app to their smartphone or tablet computer, with a limited number of tablets made available at the meeting for voters without their own device. Voters must be checked-in upon entry to the Town Meeting location. The company employs "geo-fencing" to restrict voting to devices that are within a specified geographic perimeter (say the school building or hall where the meeting is held.) It uses blockchain or "distributed ledger technology" to verify the authenticity of votes cast.

According to its website, Voatz has run "Mobile Voting Pilots" for primary and midterm elections in West Virginia in 2018 and for municipal general elections in the City and County of Denver in 2019. Each pilot was open to registered military personnel, their spouses, dependents and citizens stationed overseas. Counties in Utah, Oregon and Washington will use the system for general elections in 2019. Voter validation is accomplished via ID scan, facial recognition and data matching with the state voter file.

The company has also told us that its platform was used for remote participation and voting at the 2018 Massachusetts Republican Party Convention. Remote participants were required to pre-register and provide a driver's license or other form of official photographic identification. Voters were then validated on the day of the event via facial recognition software.

Turning Technologies, which provides clicker-based electronic voting to a number of Massachusetts towns, also offers a mobile-phone based voting app, as described here. We expect that more thorough research will uncover additional vendors who claim similar capabilities.

There are many concerns with these types of voting technologies (as discussed more thoroughly at Section IV below), the most important of which revolve around trust (security of the vote) and privacy (security of user data). While there may still be technical problems to solve on this front, the Working

Group believes it is dangerous to presume that they can't or won't be solved. Thus, we recommend continued engagement by the MMA so that appropriate legal safeguards can be developed in parallel with the technology, rather than trying to play catch-up after problems emerge.

2.   Recognizing remote speakers; question polling

A second likely technical requirement for remote participation is that the moderator be able to recognize remote participants to allow them to pose questions or make comments, as if they were on the floor of the meeting.

A common feature of many existing telephone and video conferencing platforms is a "raised hand" capability where participants who wish to be recognized can be called upon by the conference moderator and their audio/video be unmuted.   This provides the equivalent of the moderator calling on an individual who has raised their hand from the floor.

Both a feature and limitation of this signaling functionality is that the moderator only knows that someone wants to speak, and *not* what the speaker will say. Will it be a question? A comment that cuts to the heart of the issue and elevates the debate? Or an incoherent and off-point ramble? The Moderator doesn't know and so has no ability to censor (and a solid defense against accusations of favoritism!)

However, as borne out by North Andover's experiments in recent years allowing texting of questions, there may be some demand for remote participants to post questions (as distinct from making arguments). These could readily be handled technically through the "chat" function that most video conferencing platforms provide. The Moderator could appoint an Assistant Moderator to help monitor such questions.

A supplemental or alternative approach may be possible, as suggested by a mobile-phone based app called "Pigeonhole Live" (www.pigeonholelive.com). This app enables registered participants to (1) upload questions they would like to have answered; (2) see the questions that others have posed; and (3) vote on the questions they would most like to see answered.   The app could be made available to people inside the hall as well. The moderator would therefore have a continuous readout on the questions that seem most urgent to the largest number of voters, both in the meeting hall and logged on remotely. One of the Committee members (Wayne Davis, Carlisle) has seen the platform used to effectively and efficiently moderate a high-quality discussion at a conference with 1000 participants.

Pigeonhole Live also has built in polling/voting capability. However, the app seems to have been designed and put into use mainly in classrooms and for conferences and corporate "town hall" style events. Given these uses, there is no indication that its voting functionality has been built with the security measures needed for use in Town Meeting voting, and so is best characterized as "straw poll" functionality. However, the question posting and polling capability does suggest a technological aid that could enhance the deliberative quality of both the in-hall and remote conduct of a Town Meeting.

A potential limitation on the use of this technology is available bandwidth in the meeting hall.

A. Currently Allowable in Massachusetts

1.   Remote Locations for Town Meetings

Massachusetts law currently allows a limited form of remote participation for Town Meeting, familiar to any Moderator who has arranged for an "overflow room" where the main hall or auditorium cannot accommodate all voters who want to attend and participate. The basic and obvious requirement is:

- ● **A two-way public address system.** "The town meeting may be held in one or more places; provided, that if it is held in more than one place, the places are connected by means of a public address system and loud speakers so that the proceedings in all such places may be heard and participated in by all the voters present therein."   MGL c. 39, s. 10

  Issue for Remote Participation: Notably absent is a requirement that the proceedings be visible.

Perhaps less obvious are four other requirements that are easily addressed in the "overflow" situation where the remote location is simply another room in the same building as the main hall but may be more problematic elsewhere.

- ● **Identification of meeting location in the warrant.** Per MGL c. 39, s. 10, the warrant must "state the time *and place* of holding the meeting."

  Issue for Remote Participation: While this requirement can easily be met if one or a few remote locations, *e.g.,* senior living residences, are used, it would likely be impossible if voters could register to participate from locations of their choosing.

- ● **Meeting location in the town.** Per MGL c. 39, s. 9, "Town meetings shall be held within the geographic limits of the town unless a special law, charter or by-law provides otherwise."

  Issue for Remote Participation: This constrains participation by those citizens who may happen to be out of town when Town Meeting occurs.

- ● **Ability to participate.**   Per MGL c. 39, s. 10, "Whenever the moderator determines that voters are being excluded from the town meeting … or that voters in attendance are being deprived of the opportunity to participate therein for any reason whatsoever," the Moderator *must* either recess or adjourn the meeting to another time.

  Issue for Remote Participation: Arguably if even a single remote voter lost their connection to the meeting, the meeting ought to be recessed or adjourned.[1] Further, such a practice could easily be abused by individuals or groups claiming to have been disconnected.

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[1] This presumes that the disconnected voter could notify the meeting of the problem. This is quite plausible: a person might have been participating via a computer or mobile phone, having been digitally validated, but then lose the wifi connection. That person might then use a landline to call someone in the meeting to notify having been disconnected.

- **Voter validation.** Validation of voters at Town Meeting effectively is a shared responsibility of the moderator and the registrar(s) of voters (typically, the town clerk). MGL c. 39, s. 18 provides "The moderator shall receive the vote of any person whose name is on the voting list or who presents a proper certificate from the registrars of voters." MGL c 51, s. 4 charges "Registrars, assistant registrars, or boards having similar duties" with drawing up the annual voter lists. *See also* MGL c. 51, s. 37. According to a listing maintained by the Secretary of the Commonwealth of local election officials, almost all towns in Massachusetts locate voter registration within the Town Clerk's office, with just a few having a separately identified registrar of voters. Per MGL c. 54, s. 76, voter identification at the polls is accomplished simply by stating one's residential address and name. Per guidance from the Secretary of the Commonwealth, requests for any additional identification beyond that are limited to specific circumstances: first time voting in a federal election; voter has been inactive; casting a provisional or challenged ballot; poll worker has "reasonable suspicion" to request further identification." Notably, MGL c. 51, s. 33A requires the state secretary to create and maintain an online portal for voter registration and to transmit the results to local officials. The online voter registration system requires the applicant to have a signature on file with the Registry of Motor Vehicles, either from a driver's license or state ID card.

    Issues for Remote Participation: Various means currently exist, and no doubt others will be invented, to authenticate that would-be remote voters are who they say they are. Apart from technical questions about the reliability and security of such systems, there may be a question under state law about how far a town may go in requesting additional means of identification.

Finally, it is important to note that a frequent feature of overflow rooms – the appointment of an assistant moderator – is not an absolute requirement:

- **Assistant moderator optional.** "If, as provided for in section ten, a town meeting is held in separate places equipped with a public address system and loud speaker facilities, the moderator *may* appoint an assistant moderator to preside at each place of meeting whereat the moderator is not present. The assistant moderator shall have all the powers vested by law in the moderator to preside at and regulate the proceedings in the meeting at which he presides except that he shall not recognize any citizen desiring to address the meeting except after first obtaining permission of the moderator." *Emphasis added.* MGL c. 39, s. 14.

In summary, under Massachusetts law, voters may participate from a physical location separate from the physical address of the main meeting hall if:

- They are connected to the main hall by a two-way public address system;

- The remote location is within the town's borders, absent allowance by special law, charter, or by-law;

- The remote location has been listed in the warrant; and

- The moderator has some means for determining that the person casting a vote is named on the voting list.

2.   Remote Location and Participation in Other Governmental Proceedings

Although the Massachusetts Open Meeting Law, MGL c. 30A, ss. 18-25, does not apply to Town Meetings, it does provide a useful reference point. MGL c. 30A, s. 20(d) permits the attorney general to authorize remote participation by members of a public body. The Attorney General adopted regulations covering this topic at 940 CMR 29.10. The regulations "strongly" encourage physical attendance at meetings and note that "Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of M.G.L. c. 30A, §§ 18 through 25, namely promoting transparency with regard to deliberations and decisions on which public policy is based." 940 CMR 29.10(1). Thus, the only permissible reason for remote participation is "if physical attendance would be unreasonably difficult." 940 CMR 29.10(5)

Similar to the provisions for Town Meetings, only an audio connection "clearly audible to all participants" is required.   However, if a video connection is provided, then it must be visible to all members. "the remote participant shall be clearly visible to all persons present in the meeting location."

Notably, any quorum requirements must be met by those in physical attendance, with an exception permitted only for local commissions on disabilities.   Also, all votes must be by roll call.

C. Legal Questions to be Resolved

If remote participation – understood as allowing voters to address the meeting and vote from any location – is to move forward, the analysis in the preceding suggests that the following legal questions either must or should be resolved, either by state-wide legislation and/or local bylaw.

1) Should a video connection be required, or is "audio-only" sufficient?

2) If a video connection is allowed or required, is one-way sufficient or must it be two-way? What other circumstances and conditions? *E.g.,* If a video connection is optional and is used, must all meeting participants (both remote and in-person) be able to see all other participants at all times? Or just when speaking?

3) Must remote locations be listed in the warrant, either specifically or in some general form?

4) May individuals participate from locations outside the town?

5) What are the minimum requirements for voter validation?

6) Should there be any limits on what towns may request for voter validation? If so, what should they be?

7) Will remote participants count for quorum requirements?

There is at least one possible legal route for proceeding with remote participation in the absence of any state legislative change. Arguably, Representative Town Meetings are similar to the types of bodies covered by the Open Meeting Law. This suggests one more legal question:

8) Could a lion-hearted RTM adopt a bylaw that voluntarily subjects itself to the Open Meeting Law, and then adopt procedures allowing remote participation by elected Town Meeting members?

The above list is meant to be the minimum necessary.   There are many other questions raised elsewhere in this report that perhaps ought to be addressed by either statute or bylaw.

D. Considerations for Local Adoption

As with all questions of municipal law generally and Town Meeting specifically, the question immediately arises whether remote participation – if it is deemed advisable at all – is a requirement to be imposed on towns or something that is optional. While the MMA is still very early in its consideration of the topic, the 2040 Working Group recognizes that at least some towns may be eager to pursue this option, while others may not.   We are therefore prepared to recommend that:

The Legislature should adopt legislative changes that clearly authorize, but do not require, Towns to adopt procedures to allow remote participation.

Beyond that, there will be questions of which aspects of remote participation ought to have a state-wide minimum requirement and how much scope for local option is permissible. For example, existing voter registration requirements across the state show a relatively strong preference for uniformity and protection against onerous identification requirements that could be abused to disenfranchise voters. Careful thought will be required to craft digital authentication rules that respect those existing policy imperatives, while allowing flexibility for both local circumstances and technological innovation.

IV. Technology and Security Issues

Once we can adequately describe the features that capture the [true essence of Town Meeting](#) deliberations, we can study possible solutions that satisfy the requirements of a remote voting Town Meeting scenario.

It's important to remember that any technology and security implementations that we bring to bear on remote participation in a Town Meeting scenario shouldn't drive the solution. Instead, we should apply technology and security approaches only **after** fully understanding and describing the features that capture the true essence of Town Meeting deliberations. However, while we work to completely capture those features and requirements, we can - in parallel - start asking ourselves the questions that we believe are most likely to arise from those requirements.

In this section of the Remote Voting at Town Meetings report, we present the technology and security questions that will need to be answered before we can determine how we could fairly and properly structure a Remote Voting-enabled Town Meeting to adequately maintain the deliberative process and integrity of Town Meetings.

A. Key Themes that Impact the Ability to Support Remote Participation and Voting

Before we dive into specific questions about how remote voting could be brought to the Town Meeting process, we note that a number of key themes stand out and would need to be addressed by any solution that would allow remote voting for Town Meeting. As each detailed question or proposed solution is considered, these themes should be applied to determine the impact of each:

- **Security** - Any solution to provide remote participation and voting at Town Meeting must be accurate and secure against participation and influence by persons who are not registered voters within the town. Every effort must be made to ensure that the participants (especially voters) are who they are represented to be. Each individual vote of the Meeting must accurately record and report the actual votes made by authenticated and authorized voters. The means of vote collection and tabulation must be protected against submission of unauthorized votes and should include some means of verifying the accuracy of a vote in the event a vote was questioned. There would also need to be some precautions taken and, perhaps, technologies pursued to prevent the meeting from being disrupted by network outages whether accidental or intentional (ex: a network denial of service attack).

- **Privacy** - Every participant in the Town Meeting should have a shared expectation of privacy. If any voter's vote is secret, then every voter's vote should be secret. Similarly, if any voter's vote is public, then every voter's vote should be public. (Note that, in the case of a Representative Town Meeting, it is typical that votes are not secret.)

- **Trust** - There must be sufficient safeguards in any solution to engender and demonstrate that the voters can trust that the entire solution is trustworthy. Though it could be that no Town Meeting process is perfect and completely error-free, a remote voting scenario must be as trustworthy as the current system. As with every change to Town Meeting over the years and its evolution, we need to consider what level of "insecurity" we can tolerate in order to facilitate remote participation.

- **Fair and equitable access** - Since the goal of having remote participation and voting at a Town Meeting is about expanding the ability for greater engagement, we would need to prevent the "digital divide" from allowing only certain voters to participate remotely. This means that the solution couldn't assume that every voter owns or has easy access to a phone, tablet, or desktop computer that had sufficient capabilities to run the application(s)/service(s) that would be necessary. Though economies of scale would likely make it desirable for those who are able to bring their own devices, there would still need to be budget for having adequate devices and training for those who need it. There would also be a need for a very good user interface for any software application that would be used. The user experience would need to be designed for and satisfy steep requirements for occasional use that would need as little training and be as easy to understand as possible. Any software used by voters must be ADA compliant. In particular, it should be compatible with screen-reading technology or some other assistive technology that meets the needs of persons with disabilities.

  This raises the important question of what is "reasonable accommodation" which is also considered in the Policy Considerations section of this report. From a technology perspective, we need to remember that remote participation shouldn't be available only to those who can afford it or who already have a broadband connection, etc. Questions that arise include:
    o Does a town that allows remote participation take on the burden of providing devices and connectivity for any voter who wants to participate remotely?
    o What if there are some parts of town that don't have access to broadband?
    o Does remote participation change what must be provided to people with visual, aural, or other disabilities in a typical Town Meeting room?

A. Major Categories of Functional Requirements

1.   Computer Supported Cooperative Work and the Town Meeting Process

In our discussions about the relationship between the Town Meeting deliberative process and how remote voting fits into that process, we can draw many parallels to research and development work that has driven the field of **Computer Supported Cooperative Work** (CSCW). Work in CSCW has driven the advances that we see in other aspects of our daily life: remote meetings with shared audio, video, screen sharing, etc.

CSCW has identified **time** and **place** as major axes in which to view "cooperative work":
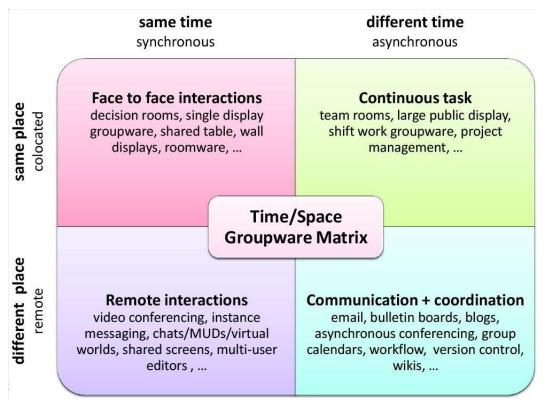
Fig. 1: Time and Place as CSCW (Groupware) axes

When we look at Town Meeting deliberations through this CSCW lens, we see that traditional Town Meeting is performed as a "same time; same place" interaction (with some occasional extensions to have a very limited set of separate places act as a kind of "same place" due to a highly orchestrated and controlled process).

If we extend our view of a Remote Voting-enabled Town Meeting to include a less highly orchestrated set of places such as "at home" voting, we can see this as a "same time; different place" problem. Our current understanding of Town Meeting deliberations requires that the legislative body discusses and acts on motions in real time. And, of course, having participants in many different locations raises the "different place" issues.

Therefore, it can be helpful to look at each of the key steps in the Town Meeting process and determine what questions that may be addressed by technology and/or security solutions we need to ask and what problems we need to solve if we want to extend the Town Meeting process to include Remote Voting:

2. Checking In (Authentication and Authorization)

Currently, a voter checks in to a Town Meeting by presenting oneself before an Elections staff member and declares one's name and address which is confirmed to match information on the voter roll. Typically, a qualified voter is then given some physical artifact that can be used to signify their vote. (Ex: a voting slip or an electronic voting device.) Even without having a photo ID attached to the voting roll, the physical presentation of oneself provides an opportunity for an election staffer to challenge

someone who is presenting themselves fraudulently. Efforts to ensure that the voting artifact (slip, electronic voting device, etc.) is only used by the voter to whom it is given vary from town to town.

For remote participation and voting:

- How would a voter present themselves to be confirmed as eligible to vote remotely? Would a video connection allowing a voter to identify him/herself to an election staff member remotely be sufficient?

- How would a remote voter receive the equivalent of an artifact that identifies him/her as being eligible to vote? Would a remote voter logging in to a remote voting system with additional authentication being confirmed by an election staffer be sufficient? (See the later "Voting" section for more about confirming that the eligible is actually casting the vote.)

3.   See and Be Seen; Hear and Be Heard

An integral part of the Town Meeting process is that everyone involved in the deliberation has fair and equitable access to those deliberations. With provisions made for those with physical impairments, of course, in a traditional Town Meeting room, this comes down to each participant being able to see and hear the deliberations. And, for those who address the meeting (including the Moderator), there is the expectation that those participants can be seen and be heard (including those audio/visual aspects of the presentations. (Ex: PowerPoint, video, print materials.) However, it should be noted that - in cases when a Town Meeting uses additional room(s) under the current law - only "hearing and being heard" is required; there is no video requirement for a multi-room Town Meeting. With the increasing prevalence of online meetings that provide both audio and video, we will consider the question of trying to provide both audio and video connections between participants to improve the sense of community. But it is an open question whether any solution that's considered would be required to go beyond the current requirement for audio.

For remote participation and voting:

- Could a real-time audio/video connection augmented with an ability to download print materials that may be distributed or shown meet the criteria? With many remote participants, it is unlikely that every remote participant could be seen at the same time (presumably in small preview thumbnails) but this is matched by the fact that, at the main meeting room, it is not practical that every participant can see every other voter who is present at the same time.

- The key aspect is that anyone who is recognized by the Moderator to address the meeting should be able to be seen and heard by all the participants in the deliberations. Conversely, the person who is speaking should be able to get some sense of a "view of the voters." Would a real-time audio/video connection that allowed the speaker to be seen by all other participants (remote or not) and the speaker having access to a view of the main room(s) and perhaps some view of a scroll or some random view of remote participants (in thumbnails) be sufficient?

4.   Managing the Meeting

The Moderator (with the assistance of the Deputy Moderator(s)) is responsible for managing the meeting, being the chief parliamentarian, and deciding how to best and most fairly guide the Town Meeting through its legislative process. With a single room or a few overflow rooms and a Moderator or Deputy Moderator in each of the rooms, the current Town Meeting process can work well and can preserve the key elements of the Town Meeting.

For remote participation and voting:

- If we think of each remote voter as being in a designated "meeting room", how can we preserve the meeting management aspects of Town Meeting? It's not practical for each remote voting location to have a Deputy Moderator physically present. Could one or more deputy moderators be assigned to watch/supervise all remote "rooms" where they would keep watch over the remote voters and act as Deputy Moderators for remote voters? Would there be additional or special responsibilities for this role?

5.   Getting Permission to Address the Meeting

Currently, Moderators use a variety of techniques to determine who is indicating an interest in addressing the meeting and to decide who to recognize as the next person who is selected to speak. This is typically done by having voters line up at microphones, raise a voting slip, or similar means.

For remote participation and voting:

- Would giving remote voters the ability to perform a virtual "raising a hand" and, perhaps, showing an additional "hand raised" visual indicator on the thumbnail image showing their presence at the meeting be sufficient?

- Are there mechanisms that could be used to help the Moderator see who would like to speak "at a glance" and/or to help them fairly choose the speakers? How can this be implemented while not losing the ability for the Moderator to use judgment in making the selection of speakers?

6.   Voting by Authenticated and Authorized Voters Only

There are a variety of mechanisms used to take votes at a Town Meeting including voice votes, showing a complete voting slip (authorization artifact) that can be visually counted or estimated, or the use of electronic voting. The Moderator uses discretion informed by observation to decide whether a motion carries or not. The presumption is that the Moderator uses the voting artifact (voting slip or electronic vote) to count/judge each voter's authentication and authorization to vote.

For remote participation and voting:

- *Does a remote voting scenario **require** electronic voting?*

  In a single room (or a very restricted number of rooms), manually counting of votes seems to work and provides adequate visibility for one to conclude whether the vote is accurate. For

electronic voting systems, there needs to be an inherent trust that the reported vote count accurately reflects the votes placed. Typical electronic voting systems record votes associated each voting device and provide some mechanism where, if challenged, some number of voters could independently confirm that their votes were recorded correctly.

In a remote voting scenario with a large number of remote voters, it seems that the remote voters wouldn't have a voting slip to hold to indicate their vote. Does this mean that allowing each voter to vote with the same mechanism, that electronic voting would be required as part of the solution?

- *Does a remote voting scenario affect a community's ability to decide whether votes are secret or public?*

   In many Open Town Meeting communities, the use of electronic voting means that votes are a kind of secret ballot (when there is no provision to record or report who had which voting device and how votes were placed with that device). Assuming an electronic voting solution for remote voting, what would a solution need to provide to allow secret ballots for communities who want secret ballots? What would a solution need to provide for towns who do not want secret ballots (or for Representative Town Meetings that need to report on votes by the representatives)? Would any non-secret ballot report be timely enough to meet the needs?

- *How to record votes?*

   Since the Moderator needs to declare the vote and the Town Clerk needs to record and report the votes in the official record of the Town Meeting, a remote voting scenario needs a mechanism that can provide accurate information for the Moderator and Clerk to perform their duties. With a large number of remote voters, there doesn't seem to be a way to accurately estimate a "show of voting slips" since it may not be possible to see all of the remote voter thumbnails at once and it is likely difficult to accurately estimate the real balance of votes by judging a vote with the different visual look of the "in the room" votes and the "online" votes except in overwhelming, almost unanimous situations. As noted above, does this imply a requirement for electronic voting? Or could a snapshot of something like a video image grab or screen capture allow manual counting of votes without an actual electronic tally of votes?

- *How can a remote voting solution prevent proxy voting?*

   The presumption is that the Town Meeting should not allow proxy voting since the theory is that only people present for the deliberations should be voting on the motions. Assuming that the "check in" process authenticates the voter and gives them some authorization to vote at the beginning of the meeting, there needs to be a mechanism for each vote that re-establishes that the remote voter is the person who is casting each vote.

   This need to prevent proxy voting makes things a bit more difficult than a typical internet login to one's account (ex: online banking). Without getting into too much detail, one possible approach to this could include a highly orchestrated process for a person to go through an

authentication process at the Town Clerk's office (prior to the Town Meeting) where they could be authenticated in person and to add some additional authentication factor to a remote voting application (ex: a fingerprint) - in the presence of the Town Clerk's staff - that would be used for vote-by-vote re-authorization during the Town Meeting. In this scenario, the voter would use an application (ex: on a phone or tablet) to login to the Meeting application and, **prior** to each and every vote, the voter would have to re-authorize their presence at the meeting by entering the additional authentication factor (and assuming that their session is still logged in using the app's primary "password").

- *How to ensure that each voter can only vote once?*

  With current electronic voting mechanisms, each device that votes can typically send multiples votes while a specific voting window is open. However, only the last (most recent) vote is counted. This is to allow a voter who presses the wrong button to correct his/her error. The assumption is that this behavior could be carried over to a remote voting application. Is this sufficient? Does remote voting (assuming voting by software app) have any requirements beyond those provided in existing electronic voting devices/apps?

A. Essential Qualities of Town Meeting

The New England Town Meeting is a unique institution, which has served the people well. Town Meeting is an assembly of community for the purpose of community self-determination and each Town Meeting reflects its community's unique character. There are a number of common defining characteristics, and to the extent these are beneficial to good governance, remote participation should be designed to enhance and extend, rather than replace or eliminate these features:

- All voters (and only voters) have equal right to participate in deliberations
  o One person, one vote
  o Proxy voting is not allowed

- Deliberation is essential, with "deliberation" understood as both the presentation of essential information and due consideration of questions and arguments about the advantages and disadvantages of a given course of action, all of which is expected to help voters make up their minds and even perhaps to change minds that had already been made up.

- Discussion is not anonymous, although some voting is secret

- The warrant article only defines the scope of the motion, not the motion itself

- Motions may be amended on the floor

- The moderator maintains order, and ensures that everyone understands what is happening

- The time for deliberation is limited, and all motions are acted upon one way or another over the course of the meeting (which may span multiple days, but does not carry on for weeks)

- Even though talk flows through the Moderator, all participants must face those with whom they disagree

- Non-board/committee members speak for themselves, not on behalf of someone else

A desire to maintain this character raises many questions regarding remote participation.

B. Questions and Concerns

1. Manner of Participation

The manner in which people remotely participate is key, because it influences the answers to many other questions. The following should be resolved prior to tackling the subsequent issues:

- Should remote participants contribute to the discussion, or should they be limited to only listening?

- If remote participants can contribute, would texting through the moderator or some other proxy be sufficient?

- If texting is not sufficient, would voice be sufficient, or should both voice and video be required?

- What role would the delivery of the remote participant's contribution affect how it is received?

There are no well-established rules of order for remote participation. These need to be weighed and addressed, so everyone understands the rules:

- Should remote participation be permitted "as of right" (without any reason required) or be subject to limitations (e.g., inability to attend in person)?

- Should remote participation be restricted to those people who are physically in town at the time of Town Meeting? To those physically NOT in the town?

- Should remote participants be allowed to:
  o make main motions?
  o move amendments?
  o raise points of order?

- Should remote participants count toward quorum?

- Should the moderator be allowed to use technical means to "mute" a participant who is out of order?

2.　　Connectivity

Current statute for Town Meeting requires only two-way audio ("public address") between a main meeting room and an excess capacity, as does Open Meeting Law. (See discussion at Sec. III Legal.) However, video connection is often provided and, arguably, expected.

- Should remote participation require video as well as audio connection?

- If video connection is provided, must all participants be able to see all other participants? At all times or only when someone is speaking?

Anyone who has participated in a teleconference, particularly a video teleconference, knows that losing part or all of the connection is a regular occurrence. These questions are raised by that concern:

- When a remote participant loses the feed from the meeting, or if they cannot connect at all, should they have any recourse other than coming to the meeting or missing the meeting?

- Should a remote participant who cannot hear/see deliberations be allowed to vote anyway?

- What techniques could be used to ensure remote participants know the exact wording of the motion being voted upon?

- If technical issues interfere with all remote participation, should the meeting adjourn until they are resolved?

- What if it's just a subset of participants?

- Should the decision whether or not to proceed despite technical failures rest solely with the moderator?

3.　　Inclusivity

It is likely that if remote participation is allowed, it could be a very appealing option to many people. Without some controls, it seems the entire meeting could quickly become distributed. However, it is also likely that any technical solution may exclude certain individuals. The following questions center on those concerns:

- Should there be a limit on the number of remote participants in a given meeting?
  - If so, what limit?

- Should participating remotely only be allowed under special circumstances?
  - If so, what circumstances?

- Does allowing remote participation raise equal protection (14th amendment) issues if not universally available?

- Does not allowing remote participation raise equal protection or ADA issues?

- Does the introduction of remote participation unfairly benefit certain parts of the population?

- Does not allowing remote participation unfairly benefit certain parts of the population?

- Should the town bear the expense of providing remote participation capabilities? (For example, if remote participation requires a mobile device or computer, should the town provide one to people who do not have their own?)

- Should the town adopt a system which is not universally available? (For example, one that requires broadband internet in a community where that is not available everywhere.)

- Should the town limit remote participation to only those who subscribe to CATV and/or broadband internet?

- What role would translation needs create, if any?

- Being present in a room indicates a certain degree of attention is paid toward proceedings. What role could distractions play in remote participants' attention to matters aside from voting?

4.   Voting Transparency and Secrecy

Town Meetings typically have a mix of secret and non-secret votes. Even towns that utilize electronic voting typically have some number of voice votes (although not all towns; in some towns every vote is electronic). It seems fair that the votes of remote participants should be just as public or private as the votes of those present, which raises these questions:

- Should the body (including other remote participants) have a way to know how remote participants are voting when votes are not secret?
  - Should remote participation only be available in towns where electronic voting is being used by the main body?
  - Should a town that is allowing remote participation eliminate voice votes altogether?

- In the case of secret ballots (or secret electronic voting on-premises) what measures could ensure the body has confidence in the vote count of remote participants?

- What kind of audit trail should be available to remote participants so they can confirm their votes are being counted?

A traditional Town Meeting includes a number of people (police, constables, the moderator, the clerk, etc.) who can keep an eye on the proceedings and try to ensure nothing untoward is occurring. Since this would be impossible with voters in remote locations, it raises these questions:

- What assurance does Town Meeting have that remote voters are not being pressured to vote a certain way?

- What measures could the town take to assure remote participants have privacy to vote their conscience?

- Should a town allow multiple voters in the same remote location to share voting equipment?

Remote participation implies some level of anonymity and isolation for the remote participants. In other forums where anonymity is the rule, such as the comments section in online newspapers, this generally leads to more anti-social behavior. How might these dynamics impact Town Meeting:

- Would remote participation erode the sense of community created by Town Meeting?

- Could remote participation result in less civil behavior, as happens in other internet forums?
  - What steps could a town take to avoid these tendencies?

VI. MOVING FORWARD WITH ANY PROPOSALS

A. What is the Process for State Legislative Approval?

Any legislation filed to deal with remote participation would be assigned to the Joint Committee on [Municipalities and Regional Government](#) or the [Joint Committee on State Administration](#). The former is more likely as it has handled prior Town Meeting oriented legislation in recent years and is specifically tasked to deal with the operation of municipal legislatures. Assignment to committees is made by the House and Senate Clerks but Committee chairs can refuse consideration if they believe such has been inappropriately designated as the responsible committee.

Filing of a bill by a legislator does not secure a public hearing on the matter. Various Massachusetts legislators including a current moderator colleague, Rep. David Vierra, advise that interest alone is insufficient to gain a foothold on the attention of the General Court. There are two principal ways in which the matter may be prompted:

1. A specific member or members who have an interest choose to champion the issue by commencing discussion and filing legislation. It must be noted that there is more likely to be serious consideration should the parties interested be members of the Leadership of the majority party.

2. Filing of a Home Rule Petition (requiring an affirmative vote of a Town Meeting), albeit for a specific community, is the best and most likely manner in which the issue of remote participation will be broached. Unlike general legislation, all Home Rule Petitions are guaranteed a public hearing. The existence of one or more Home Rule Petitions might enhance the possibility of more universal legislation being considered.

Any consideration of remote participation will likely invite comparison to the [Municipal Modernization Act](#), which added provisions to the Open Meeting Law to allow public bodies to permit remote participation by members under certain conditions. *See [Section III, above](#).* Most prominent among the conditions are that a continuous two-way connection be present throughout the meeting, and that a quorum of members be physically present in the venue of the municipal meeting. The act does not extend this to Town Meetings because its gating factor is application to public bodies that must follow the Open Meeting Law, which specifically does not apply to Town Meetings.

Two advisories were universally offered by legislators with whom the writers spoke, the first prompted by the existence of the Municipal Modernization Act as it caused some musing as to the extension of that act to accomplish a prospective, but iterative, implementation of remote voting:

1. Testing remote participation would more likely be welcomed within the confines of a Representative Town Meeting given that all members are elected and deliberation by them is known by the community. This is not to say that Home Rule Petitions by Open Town Meeting communities would not be considered but rather that an iterative step with prior foundation in law is more likely to pass.

2. Advancing discussion on the matter is specifically tied to solving a specific, articulated problem that a community or a legislator(s) believes exists and the Legislature's involvement is required

to solve it. The characterization most noted was "don't ask the Legislature to solve a problem that does not exist."

When developing a new area of law, especially one that is at least partially-tied to advances in ever-changing technology, there will inevitably be a tension between the benefits of learning through experimentation by having some towns advance Home Rule Petitions and the benefits of legislative efficiency of dealing with the problem once and decisively by creating a universal framework. It remains to be seen which may be more advisable for the issue of remote participation.

B. What Next for the MMA?

The MMA 2040 Working Group will continue to develop this Interim Report into a Working Paper.

We anticipate collecting commentary on this Interim Report from MMA Members

- At the Annual Meeting on November 1.

- Via one or two state-wide video conference calls in November and December.

- Online here.

Thereafter, the existing content will be revised and expanded.   Particular areas in need of expansion may include, but would not be limited to:

- Further surveys of available technology platforms;

- Proposed answers to at least some of the policy questions raised throughout the document; and

- Advice to the MMA itself and to interested Towns about how they might proceed.