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To: Roy Avis
Subject: AMO Policy Update - New Policing Legislation Introduced at Queen's Park

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New Policing Legislation Introduced at Queen's Park

Long-awaited policing legislation was introduced today. This follows a five-year review by the Future of Policing Advisory Committee (FPAC), of which AMO was an active participant, and Justice Tulloch's Independent Police Oversight Review.

Through our widely read report, AMO was the only participant at FPAC to express publicly a clear vision of how policing, in its totality, could be modernized to improve efficiency and effectiveness. Some elements of those recommendations are contained, in part, in the new legislative framework. But it is equally clear that there are many competing agendas and interests among public safety participants at FPAC.

To be clear, some of the changes in the bills will advance the agenda to modernize policing, particularly with respect to oversight. But there are also some key proposals which will have a municipal cost.

The government's entire package of reforms is called the *Safer Ontario Act, 2017* and it includes a new *Police Services Act* and a new *Policing Oversight Act*. They are the most significant revisions to the legislative framework that governs policing in nearly 27 years. The government is hoping this package of reforms will become law by the end of the year. This members' update will focus on the *Police Services Act*. Further updates related to oversight agencies will follow as required.

Key Municipal Implications Include:

Mandating municipalities to develop Community Safety and Well-Being Plans

AMO's Understanding: The Bill proposes that all municipalities (or groups of municipalities and/or First Nations) develop mandatory Community Safety and Well-Being Plans (CSWB) and there are significant municipal impacts. All municipalities must establish an advisory committee with a prescribed membership that shall include community

service representatives from LHINs, health care, education, social services, child services, an elected official, a police service board member, and others as prescribed.

This committee would be required to develop a plan to mitigate crime, victimization, addiction, drug overdose, suicide, prioritize risk factors, provide new services, and set measureable outcomes related to public safety services. Municipal councils would be required to adopt such a plan. Municipalities do not oversee all of the above participants. There is no requirement that the municipal or OPP police services would need to participate or implement a CSWB once developed. While a municipality must do a comprehensive plan, there is no requirement to use it.

A failure to comply with this requirement will result in the appointment of a community safety planner by the Ministry who would be empowered to exercise the powers of a municipal council to fulfill the requirement to develop and implement a plan. The cost of appointing a planner would be charged to the municipality.

Key Municipal Issues: AMO supports the objectives of CSWB planning on a voluntary basis. CSWB pilot projects have demonstrated success precisely because of the voluntary participation of all partners. AMO supports the voluntary municipal development of CSWB plans, especially in circumstances where municipalities are attempting to respond to acute public safety needs in local circumstances.

AMO objects to the universal imposition of a new unfunded mandate. AMO is not confident the government has fully considered what this would mean for municipal governments in terms of capacity to deliver, costs, ability to implement, and what the risk of non-compliance could mean for many communities.

It treats all municipal governments, from the smallest to the largest, exactly the same. One quarter of all municipalities have less than five full-time administrative staff. There is a big municipal capacity issue associated with this mandate that the Ministry has not considered despite our advice.

The appointment of a community safety planner undermines the authority of democratically elected municipal councils.

The government has not demonstrated that there is a universal need for heavily prescribed CSWB planning province wide. The government has not demonstrated the value of developing such a plan if it cannot be successfully implemented.

Civilianization:

AMO's Understanding: It was AMO's hope that the legislation would enable greater civilianization rather than restrict it. The opportunity for civilianization is now extremely limited as presently drafted in the bill. The authority to use civilians or contracted services in the delivery of some public safety functions by civilians or non-officers could have delivered the same public service functions, at a reduced cost. The bill limits civilianization to non-profit entities delivering crime prevention and assistance to victims of crime, and some highly specialized functions (i.e. forensic identification, polygraph operators) for which there are likely very few non-profit providers.

Key Municipal Issues: One key way to reduce costs is for officers not to fulfill all the functions they are currently doing. There are a number of functions, which could be overseen by a police service, but delivered by others. They include ground services for missing persons, some types of minor property offences like break-ins or vehicle theft, directing traffic, and crime scene security, etc. Court security and prisoner transportation could also be delivered in more efficient ways but changes in these areas are now restricted.

One Police Service Board per OPP Detachment

AMO's Understanding: The proposal would reduce the number and consolidate all existing OPP community policing advisory committees (non-contract or Section 5.1) and OPP police service boards (contract or Section 10) into one board per OPP detachment. In effect, this would eliminate nearly 100 OPP boards. The composition of OPP detachment boards shall be outlined in regulations. In addition, an OPP Police Governance Advisory Council would be established to advise the Minister on the responsibilities of the Commissioner.

Key Municipal Issues: Consolidation of Boards: The elimination of nearly 100 OPP boards will put much more distance between a community, its board, and the police. Policing is fundamentally local. This creates a significant logistical challenge. Detachment boundaries should not be the starting point for determining board boundaries. The importance of giving all municipalities a voice in policing needs to be emphasized. Municipal governments will need to have a much better understanding of how these changes will work in practice, especially how every municipality is going to continue to have a voice under this framework. These details will be prescribed in regulation.

Establishment of the OPP Governance and Advisory Council: This proposal touches on recommendations made by AMO's Policing Modernization Paper related to establishing such a body. The Council will provide the Minister with advice regarding her powers with respect to the OPP. This is a positive change.

Police Service Boards Reforms (own force)

AMO's Understanding: The Ministry is proposing a variety of changes related to police service boards. This includes preserving existing ratios of municipally appointed and provincially appointed representatives, permitting councils to adopt a board composition of five, seven, or nine members (from three, five, and seven). All municipal councils would be required to develop a diversity plan as prescribed in legislation, which would include taking reasonable steps to promote the availability of appointments to members of demographic groups, racialized and Indigenous groups, reporting to the Minister on an annual basis.

Municipal appointments shall have regard for: the diversity of the population, prescribed competencies, and a police record check. Former police officers would also be prohibited from serving on a board where they were a member, for two years. In addition, board members would be required to complete training within a prescribed period. If training is not completed, that individual would not be permitted to perform the duties of a board member.

Key Municipal Issues: The prescriptiveness of some of the Ministry's new requirements will have very clear resource and mandate impacts for boards. Can all boards fulfill these new mandates? The financing of these requirements has municipal financial implications. Help and support for boards in fulfilling their primary governance responsibilities is needed.

Board Size: Increasing the size of boards with the same ratio of provincial and municipal appointees increases the representativeness of boards.

Diversity Plan: In effect, the applicability of a diversity plan is largely limited to the single community representative which council must nominate. What provisions would be made to ensure provincial and municipal diversity plans are aligned?

A much bigger impediment to diversity and representativeness is the number of provincial appointments that remain vacant. According to the Ontario Association of Police Service Boards (OAPSB), as of March 2017, over 90 of 250 provincial board positions are unfilled and vacant. This negatively affects successful governance and diversity. The provincial *unappointed* members are the biggest barrier to achieving representativeness and diversity in our view.

This is an issue that has been raised by the Auditor General of Ontario. Addressing this issue alone could have a profound impact on the function and capacity of boards.

Police Record Check: There would be a new requirement for municipal appointees to boards.

Mandatory Training: The government is proposing to regulate the timeframe in which mandatory training for board members must be completed. AMO's Policing Modernization Paper supported the concept of mandatory training. What has not be determined is who will deliver this training and how it will be paid for. This is a key consideration. If mandatory training is to be successfully delivered, a mechanism must be established to deliver it.

Budget Disputes: Currently the Ontario Civilian Police Commission (OCPC) is used to adjudicate any budget disputes between municipalities and local police services boards. In the last twenty years, the OCPC has not needed to adjudicate any budget disputes between municipalities and local police services boards. Justice Tulloch recommended the OCPC's power regarding budget disputes be eliminated. He wrote, "It is not appropriate for an adjudicative tribunal like the OCPC to be interjected between municipalities and local police services boards. Determinations about the structure and budgets of police forces are policy and operational matters in which the OCPC lacks specific expertise. They are often political decisions".

It is proposed that a different adjudicative tribunal be given this mandate, the Ontario Police Arbitration Commission (OPAC). Justice Tulloch did not say give the mandate to different adjudicative tribunal, he said it was not appropriate for a tribunal, period. OPAC arbitrators also lack the requisite expertise to fulfill this function.

There is no need for the OPAC to hear such decisions in the first place, especially considering there have been no such disputes in the past twenty years. This provision continues to infringe on the authority vested in municipal councils to make resource allocation and taxation decisions.

Strategic Plan: Police service boards will be required to develop strategic plans at least every four years. The legislation is highly prescriptive; it lists at least fifteen prescribed topic requirements. Whether or not a police service board strategic plan aligns with the municipality's community safety and well-being plan is a key consideration.

Establishment of a Provincial Inspector General

AMO's Understanding: A Provincial Inspector General would fulfill the following primary function:

- Monitor and conduct inspections of boards,

- The Inspector **will not have the authority** to conduct inspections of police officers and whether they are complying with their codes of conduct.

Key Municipal Issues: It would seem the Ministry has chosen to emphasize the enforcement of governance requirements as a top priority, versus helping boards succeed in fulfilling their role. AMO would have liked to see resources or supports devoted to supporting boards, in support of the Inspector General's mandate.

Suspension without Pay

AMO's Understanding: The Bill includes provisions to suspend an officer without pay for a period of time, under very specific circumstances. AMO supports amendments which enhances the ability of a Chief to maintain discipline within the police service. Public expectations on this specific issue are very high.

Waterways Policing

AMO's Understanding: Previously, selected municipalities were required to have a waterways policing capacity. As written in the new bill, AMO believes that all municipal police services will be required to police all waterways (in addition to the OPP).

The above initial observations are provided to help municipal leaders and staff assess the impact of this proposed legislative change. It is expected that this proposed legislation will be passed before the House rises in mid-December. Further analysis will be conducted on these Bills in the coming days.

For more information, contact Matthew Wilson, AMO Senior Advisor,
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