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***AMO's Submission to the Standing Committee on  
Justice Policy on Bill 128, the Proposed Law  
Enforcement and Fortified Property Management  
Statute Law Amendment Act***

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Association of  
Municipalities  
of Ontario

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## **INTRODUCTION**

AMO supports the need to address community impacts associated with marijuana home grow operations. Demonstrating our commitment to this issue, we were participants in the initial Green Tide Summit and now serve on the Ministry of Community Safety and Correctional Services' Green Tide Action Group.

Unfortunately, Bill 128 did not benefit from pre-consultation with AMO. This has resulted in some oversights regarding liability protection, requirements for inspection, safety and training, upper and lower tier municipal jurisdictions and cost recovery. The legislation also does not go far enough to protect consumers who might unknowingly purchase a former home grow operation.

After consulting our members, we have developed this submission to highlight our concerns, support and recommendations for consideration.

## **AREAS OF CONCERN**

### **LIABILITY PROTECTION**

We agree that municipalities are important partners in tackling the issue of marijuana home grow operations. Bill 128 places a lot of responsibility on municipalities to become involved – we understand this responsibility. To ensure municipalities are not penalized for their involvement, the proposed legislation needs to incorporate liability protections so that the municipality or any of its employees are not held financially responsible for the negligence of the home grow operators.

### **INSPECTION REQUIREMENT**

The proposed legislation specifically identifies the Chief Building Official as responsible for carrying out the inspection of a home grow operation if notified by police. This raises two questions. First, is the building official the right person to be identified, and second what is the intent of this section?

Building officials are responsible for inspecting building code violations and are not qualified to issue orders pertaining to mould, electrical or fire code violations. By solely identifying building officials in the legislation, it implies that the building official is responsible and therefore liable to ensure that the house is brought up to code in all areas. Since the building official is not the sole municipal official that would potentially deal with code violations emanating from a home grow operation, we would request that the legislation be broadened in this section to notify the head of the municipal administration, in both the upper and lower tier municipality, who in turn would identify the appropriate municipal officials to enforce municipal bylaws or provincial acts or regulations.

The fact that the proposed legislation specifically addresses the requirement for inspection raises questions about intent. If the intent is to ensure that a home is brought up to code, an inspection does not ensure this. The only power a municipality has following an inspection is to issue an order, charge the homeowner if it is not addressed, and reissue the order. The inspection does not automatically result in repair. Home grow operations often pose challenges in locating the owner and the responsible party to make the repairs. Municipal governments are not responsible for bringing these homes up to code.

### **SAFETY AND TRAINING ISSUES**

The fact that the legislation requires municipal officials to inspect a home grow operation raises several concerns around safety. Entering a home grow operation that might have significant structural damage, toxic mould levels or booby traps raises more challenges than typical inspections. As a result, most municipal officials required to conduct the legislated inspections would not have the appropriate training to face these hazards. Additional training and appropriate safety attire such as hazardous material suits would be necessary. In addition, any inspection should only take place after the police have deemed the building to be safe, and only occur in the presence of a police officer. This is another cost that municipal governments cannot afford or be expected to absorb. As an immediate measure to address some of these costs, we recommend that the recently announced Fire Training Grants be permitted to fund the training and procurement of equipment that would assist municipal inspectors in carrying out their responsibilities under this Act.

In addition to municipal officials conducting inspections, police officers will also require additional training and equipment. Funding police services continues to be a major challenge for municipalities. Municipalities struggle to provide training and appropriate equipment to meet ever-growing provincial requirements. Funding also needs to be provided to municipalities to provide the appropriate resources to their police forces to safely and effectively secure identified home grow operations.

### **UPPER AND LOWER TIER MUNICIPALITIES**

The proposed legislation does not recognize the roles and responsibilities of upper and lower tier municipalities. In some two-tier situations, police services and public health are delivered by the upper tier, and other services such as building inspections and fire services are administered at the lower tier. The proposed legislation does not account for these different roles. With respect to the requirement of police notifying a municipality, the appropriate heads of the municipal administration of both the upper and lower tier municipality should be informed in writing.

## **COST RECOVERY**

Although we are supportive of the need to secure and inspect home grow operations, municipal governments alone cannot absorb the associated costs. Not only will there be costs for training and safety equipment, but there will be an increased burden on municipal officials for inspection.

The proposed legislation addresses proceeds of crime and suggests the proceeds be paid to the Crown to reimburse it for costs incurred. We would argue that municipal governments should be entitled to receive some of these funds to offset the costs associated with shutting down and inspecting home grow operations. Funds could be placed into a provincially administered program with municipalities receiving a defined share to support their activities in dealing with this crime that significantly affects our neighbourhoods. This could be developed in a similar manner as the share in casino proceeds, which helps municipal governments deal with the socio-economic and policing impacts. Another approach would be to develop a system through which a municipality would apply to in order to offset their costs.

## **CONSUMER PROTECTION**

After a marijuana home grow operation is shut down, it is typically resold. Often times the buyer is unaware that the house was a home grow operation. Due to possible structural damage, along with possible mould issues, the buyer should be informed of the home grow operation. To ensure this, we recommend that the home grow operation should be registered on the title of the property.

## **AREAS OF SUPPORT**

### **PERMISSION TO SHUT OFF HYDRO**

Municipalities, as shareholders of local distribution companies, lose millions of dollars annually due to hydro theft. We fully support the amendments to the *Electricity Act* that permit the electricity distributor to shut off electricity to a property if it is suspected as a home grow operation.

### **INCREASED FINES**

We are supportive of the increased fines as outlined in the amendments to the *Fire Protection and Prevention Act*. The amendments need to be clarified however to reflect that municipalities, due to the *Provincial Offences Act* transfer, should receive the increased fine revenue. In addition, we recommend that fines for building code violations be increased.

## MUNICIPAL POWERS

We support the changes to the *Municipal Act* that provide municipal governments with the power to co-ordinate law enforcement activities.

## CONCLUSION AND RECOMMENDATIONS

Municipal governments are partners in crime prevention and community safety. We fully support the need to address the increasing numbers of marijuana home grow operations in our communities.

The problem however is that the proposed legislation puts the onus on municipalities, through their police departments or contracted policing and their inspectors, to identify, secure and inspect home grow operations. This is not an easy task, nor is it a safe one. Being exposed to booby traps, toxic mould levels and unsound building structures is something that most municipal officials, and even some police officers were not trained for and which could affect their job description and classification.

This unfortunate new reality means that to protect our employees, even greater investments will need to be made in training and safety equipment. Municipalities are struggling as it is to balance their budgets, due to increasing demands from all sides. This is one more pressure that cannot be funded by the property tax – at least as the current burdens exist in terms of subsidizing provincial social and community health programs.

In an attempt to address our concerns with regard to inspection, safety, training and costs, we propose the following recommendations for your consideration:

1. To ensure municipalities are not penalized for their involvement, the proposed legislation needs to incorporate liability protections so that the municipality or any of its employees are not held financially responsible for the negligence of the home grow operators.

2. The *Building Code Act* be amended as follows:

- (1.1) “An inspector shall enter upon land and into a building at any reasonable time without a warrant **and in the presence of a police officer** for the purpose of inspecting a building if the **head of the municipal administration** has been notified by a police force **in writing** that the building contains a marijuana grow operation.

- (1.2) **For the purposes of this section, in two-tier municipalities a police force shall provide notification in writing to the head of both the upper tier and lower tier municipality where both appoint officials for the purposes of enforcing municipal by-laws, or provincial acts or regulations.**

(1.3) The inspection required by subsection (1.1) must be carried out within a reasonable time after the **head of the municipal administration** has been notified as described in that subsection.

(1.4) **For the purposes of this section, an inspector shall include any municipal official appointed for the purpose of enforcement of a municipal by-law or provincial acts or regulations”.**

3. A provincial program must be established that would provide municipalities with funding to offset the costs they incur when securing and inspecting a home grow operation. The program could be funded from any proceeds of crime that the Attorney General or Ministry of Community Safety and Correctional Services collects. We would also recommend that the recently announced Fire Training Grants be permitted to fund the training and procurement of equipment that would assist municipal inspectors in carrying out their responsibilities under this *Act*.
4. Amendments to the *Fire Protection and Prevention Act* should be clarified to ensure that any increased fine revenues be directed to municipalities, as outlined in the *Provincial Offences Act* transfer.
5. Any history of a home grow operation should be registered on the title of a property to ensure that future buyers are protected.