

Town of Whitby

Staff Report

whitby.ca/CouncilCalendar



Report Title: Business Licensing By-law exception request 417 Byron Street North

Report to: Committee of the Whole

Date of meeting: December 11, 2023

Report Number: LS 13-23

Department(s) Responsible:

Legal and Enforcement Services

Submitted by:

Francesco Santaguida, Commissioner of
Legal and Enforcement Services/Town
Solicitor

**Acknowledged by M. Gaskell,
Chief Administrative Officer**

For additional information, contact:

Andre Gratton, Manager of Legal and
Enforcement Services

1. Recommendation:

1. That this report be received for information.
2. That an exemption to Business Licensing By-law # 5505-04, as amended, be granted for 417 Byron Street upon the conditions set out in this Report;
3. That staff be directed to bring an amendment to the Business Licensing By-law # 5505-04, as amended, to codify this exemption and conditions for the December 18, 2023 Council meeting;
4. That Council direct staff to review the lodging house provisions within the Business Licensing by-law and report back on the merits of amending the By-law to ensure consistency with other applicable provincial legislation; and
5. That Council direct staff to review the merits of adding provisions/schedules to the Business Licensing By-law to regulate Rooming Houses in the Town of Whitby.

2. Highlights:

- After completing a renewal inspection at 417 Byron Street North, Enforcement Services did not renew the Lodging House licence due to contraventions of the Town's Business Licensing By-law #5545-04, as amended (the "Business Licensing By-law").
- Schedule 8 of the Business Licensing By-law restricts the total number of occupants living within a single Lodging House to ten (10) occupants.
- 417 Byron Street North has had a licence in good standing since 2016.
- Prior to 2016, the dwelling in question was not registered as a lodging house.
- Due to the refusal to renew, the owner of 417 Byron Street North filed an appeal to the Town's Municipal Licensing and Standards Committee with respect to the timeframe to achieve compliance (i.e., reduce the number of occupants).
- In addition to the above, the owner of 417 Byron Street North has submitted a formal request for an exemption to the Business Licensing By-law to permit an increase to the total number of occupants from ten (10) to seventeen (17) + one (1) live in employee.
- Staff do not oppose the request for an exemption, subject to the conditions set out in this Report LS 13-23.

3. Background:

Staff conducted a renewal inspection at the 417 Byron Street North property for a Lodging House. At the time of the inspection, contraventions of the Business Licensing By-law were found, including a total number of 17 occupants residing at the property. The Business Licensing By-law restricts the total amount of residents to ten (10) and each resident must be provided with a minimum of 9.29 square metres (100 square feet) of liveable space.

The site has been the subject of a request to investigate through the Mayor and Council Office (MOC), and the owner sent the Town exemption request, which was included in the July 7, 2023 Council Information Index (see Attachment 2). The item was pulled from the Council Information Index and staff provide this report for Council's background and recommendations.

4. Discussion:**Complaints Received regarding 417 Byron Street North**

In considering the exception request, staff reviewed department and corporate records for the operation and any complaints received about 417 Byron Street North. In 2023, staff received complaints related to unsupervised occupants during the night. Enforcement Services staff have requested confirmation of 24-hour staffing at the

property levels as required in Section 7a) & b) of the Business Licensing By-law. To date, the owner has not provided confirmation to Town staff to show it has staffing levels in compliance with the Business Licensing By-law. The request for an exception highlight that an improvement needs to be made to the operation of the lodging house. Prior to the 2023 complaint, Enforcement Services had not received any complaints about the property.

As noted above, the operation of a Lodging House at 417 Byron Street North has been in good standing with the Town of Whitby Enforcement Services since 2016. Prior to 2016, the operation was not licensed as a Lodging House and may be due to being regulated under separate legislation or being provincially inspected and funded.

Staff are concerned that refusing the exemption will increase the number of individuals experiencing homelessness in the Town

Staff have spoken with residents at the 417 Byron Street North property, as well as the owner, who have advised staff that this type of affordable housing is not readily available in the Town. If an exemption were not granted, it is likely that the seven occupants above the by-law limit would have to find alternative arrangements, failing which they may be forced to live on the streets.

Given the Town's ongoing experiences with people experiencing homelessness, staff recommend that a limited exemption be granted allowing for the seven additional occupants to remain at 417 Byron Street North, and as they leave the property, the number of occupants be reduced over time to comply with the Business Licensing By-law through attrition.

An exemption will not affect the Town's ability to address nuisances or other concerns.

The general provisions within the Town's Business Licensing by-law are designed to protect the community. These provisions (see Attachment # 1) Section 2-10 allow the Clerk to revoke, refuse to issue and suspend a license due to complaints and contraventions of provisions of the Business Licensing By-law.

The general powers under the by-law allow staff and Enforcement Services to address any problematic operations.

Upon revocation, suspension or refusal to issue, the applicant has the ability to appeal the suspension, revocation to the Town's Municipal Licensing and Standards Committee. The Committee after hearing from all parties may, for cause, revoke or suspend or refuse to issue or renew any licence to which this by-law applies. The Committee appeal has been put on hold for Council to consider this request.

Should Council wish to grant the exemption, staff recommend that any problematic conditions of the operation may be addressed through the above general licensing provisions and the conditions set out below.

In reviewing and discuss the requirements/provisions of the Business Licensing By-law with other departments involved with inspection, staff recommend that the Business Licensing By-law provisions in relation to Lodging Houses be reviewed and, if necessary, amended to ensure consistency with other applicable regulatory provisions such as the the *Fire Protection and Prevention Act, 1997*.

Should Council wish to grant the exception, staff recommend that the exception should be subject to the conditions outlined below

1. The total number of residents on the property shall not at any time exceed seventeen (17) residents and one (1) staff person on site twenty-four (24) hours per day and seven (7) days per week.
2. This Owner shall achieve compliance with the Business Licensing By-law through attrition by not replacing the seven (7) additional residents currently residing at 417 Byron Street over-and-above the Business Licensing By-law maximum of ten (10). For clarity, the total number of occupants permitted to reside at 417 Byron Street shall progressively decrease to ten (10).
3. The owner of the property shall provide to the Manager of Enforcement Services (or designate) a letter indicating the number of residents living on the site as part of its annual renewal and at any time requested by an Officer, demonstrating compliance with Section 7 a) & b) of the Business Licensing By-law and these conditions;
4. The Owner shall maintain insurance on the property with a minimum liability of five million dollars, and shall provide the Town with a Certificate of Insurance naming the Town as an additional insured, on the Town's standard certificate and to the satisfaction of the Commissioner of Financial Services and Treasurer (or designate).
5. That the owner produces written verification that the operation complies with Section 10.2 of Schedule 8 of the Business Licensing By-law (Lodging House provisions); and
6. The owner of the property shall provide and maintain emergency contact information for all employees to the Manager of Enforcement Services (or designate).

5. Financial Considerations:

There are no financial implications to this report.

6. Communication and Public Engagement:

Staff will review any proposed amendments to the Town's Business Licensing By-law with the current Lodging Houses licensed within the Town of Whitby.

7. Input from Departments/Sources:

Staff reviewed the contents of this report with the Town's Fire & Emergency Services Department.

8. Strategic Priorities:

This report generally supports Strategic Pillar 1, Objective 1.1 related to Improving Community Safety, Health, and Well-being through addressing concerns related to the use and not exacerbating issues related to homelessness in the Town.

9. Attachments:

Attachment 1 – Excerpts of the Business Licensing By-law

Attachment 2 – Legal and Enforcement Services Memorandum to Council
dated July 7, 2023.