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Carlos Carballada's mayoral appointment raises

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Written by **Brian Sharp**

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Questions continue to dog the city's mayoral succession process with the latest debate focused on whether the city over-reached in installing Acting Mayor Carlos Carballada under provisions of its emergency plan.

The city code section relied upon defines an emergency quite extensively, where citizens' lives are imperiled by such troubles as "conflagrations, explosions, earthquakes or other convulsions of nature, floods, tidal waves, pestilence."

Critics have seized on this, as well as an underlying state code — that defers first to any other avenue for succession — to argue there are no grounds for the emergency, temporary appointment. City Council, they say, must abandon its plan for a March 29 special election and instead appoint a mayor for the year as provided in the City Charter and wait for the primary and general elections in the fall.

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Getting here from there

Nov. 2, 2010: Mayor Robert Duffy wins election as the state's next lieutenant governor.

Dec. 14: City Council announces that a 5-4 majority supports a special election in the spring rather than a one-year appointed mayor with primary and general elections in the fall. Either election would decide who fills the remainder of Duffy's term through 2013.

Dec. 31: Duffy resigns and is sworn in as lieutenant governor.

Jan. 1, 2011: Deputy Mayor Thomas Richards assumes the mayor's office and takes the oath.

Jan. 6: City Council delays a vote setting the special election for March 29, saying they want to further examine questions about the standing of Richards and potential issues with the federal Hatch Act. The law prohibits some government employees from also being candidates for elected office.

Tuesday: Richards announces he will resign and be replaced by Carlos Carballada, the city's commissioner of Neighborhood and Business Development.

Thursday: Carballada steps in as acting mayor.

Related Links

- [Former acting Mayor Thomas Richards' emergency interim succession update](#)
- [City Charter section on mayoral succession](#)
- [City Code section on mayoral succession](#)
- [State code section on governmental succession](#)
- [Rochester's 2002 emergency plan, including mayoral succession](#)

A State University of New York at Buffalo law professor tends to agree. The current situation is dubious, said professor Rick Su, who specializes in municipal government law. Relying solely on the emergency provisions appears a misuse of the law. More defensible, he said, is the city contention that a mayor can appoint a deputy, and thus a line of succession.

Former Mayor and potential mayoral candidate William A. Johnson Jr. said a legal challenge should be brought. But to what end? The courts cannot force City Council to take legislative action and appoint a mayor.

"The most (the courts) could do is say whoever is the mayor is not the mayor," Su said. "The mayor then goes into limbo again. The only thing a court could do is get

it back to the point where no decision is made.

"This is sort of the black hole in the charter. ... I think it's fascinating."

To Johnson and others close to the process, however, it's madness, pure politics or hair-splitting legalese.

"Carlos Carballada is not the mayor or the acting mayor of the city," said Johnson, who has argued against the special election process. "There is no emergency that is described under that provision that applies to this situation. It would appear to me that City Council is engaged in extreme malfeasance if it is not going to appoint (a mayor), if it lets this city go any longer without appointing a mayor."

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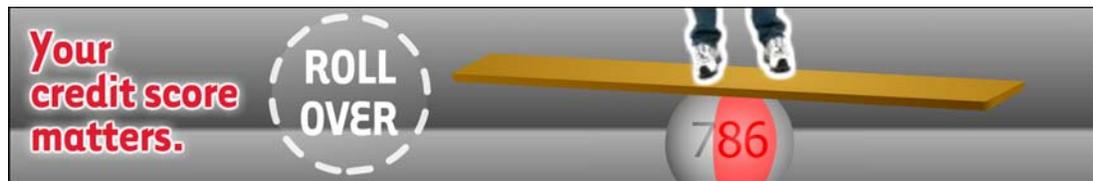
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