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Municipal Bankruptcy and the Fiscal Twilight Zone.

San Bernardino, Calif., could become one of the first U.S. local governments to enter a fiscal Twilight Zone — a forbidding place where anything can happen. The city's federal bankruptcy judge, Meredith Jury, has been explicit: If the city fails to meet a May 30 deadline to complete and submit its plan of debt adjustment, its bankruptcy petition could be dismissed.

By freeing San Bernardino's creditors — a list of them runs to more than 85 pages — to go after the city's assets, such a dismissal would open the door to the figurative dismemberment of the municipality. The threat to vital public services from such a catastrophic fiscal event would almost certainly force the state, which has been missing in action throughout the city's bankruptcy throes, to act. No one can say what that might portend.

There are real reasons to fear that the city may miss that May 30 deadline. The city's outside auditor, Macias, Gini and O'Connell, has disclosed that it may not have all of its work completed in time. And San Bernardino's elected officials still have much work ahead of them as they put together a strategic plan for returning the city to solvency, reducing the factors that contributed to that insolvency and agreeing on a blueprint for a sustainable fiscal future.

Unlike a corporate bankruptcy, where the business simply shuts down and the keys are effectively turned over to the federal bankruptcy court for the assets to be divvied up; municipal bankruptcy is a wholly different breed intended to ensure that there is no disruption of essential public services, such as 911 or water. Thus the federal bankruptcy court can act as a vital bulwark to protect the public. But that protection cannot last forever.

In Detroit, U.S. Bankruptcy Judge Steven Rhodes' acceptance of the city's bankruptcy petition immediately protected the Motor City from the claims of more than 100,000 creditors. It granted the city nearly 18 months to negotiate with its different classes of creditors and reach a consensus with the vast majority.

There are big differences, however, in the way municipal bankruptcy works in different places, thanks to variations in state law. In Michigan, for example, when a local government files for federal bankruptcy protection, its elected leaders are removed from authority until a bankruptcy exit plan is approved; the state steps in and appoints an emergency manager. In California, elected officials remain responsible not only for governmental operations but also for communicating with citizens throughout the formulation of both a strategic plan and a plan of debt adjustment. That is a singular challenge.

To date in San Bernardino, work on the city's bankruptcy exit plan, detailing how each of the of the city's thousands of creditors will be treated and incorporating a 20-year forecast, has been done behind closed doors: A gag order prohibited much of the information related to that plan from being disclosed even to members of the city council.

Now that the gag order has expired and the seven council members are privy to the information, Mayor Carey Davis has made clear that the time for public involvement is coming: "We can't have

the strategic plan and the plan of adjustment pulling in two different directions," he says. What the community wants in a plan of adjustment — improving education or reducing crime, for instance — will need to be funded appropriately in the plan of adjustment. As City Attorney Gary Saenz puts it: "We're going to require a significant amount of engagement from all stakeholders — residents; businesses; important institutions, for example the school district. … We want to involve many more people now."

U.S. Bankruptcy Judge Thomas Bennett told me that one of his greatest concerns in the Jefferson County, Ala., case was the absence of the county's taxpayers from a key role in helping it put together its exit plan. That isn't going to be the case in San Bernardino. But involving the public in the creation of San Bernardino's plan to exit bankruptcy is likely to be a messy process.

That prospect is inescapable. Democracy is messy. It is hard. And time is short: May 30 is just around the corner. If municipal democracy does not work in San Bernardino, it could mean the end of the city as a viable entity — and a trip to the fiscal Twilight Zone.

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