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Publicly-Subsidised Stadiums: Changing the Game Through Good Governance

Ryan Gauthier

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PUBLICLY-SUBSIDISED STADIUMS: CHANGING THE GAME
THROUGH GOOD GOVERNANCE

RYAN GAUTHIER*

This article examines public subsidies for professional sport team stadiums, applying principles of good governance. Good governance has been applied to sports governing bodies, and this article advances the discussion of good governance in sport by going beyond organizational governance. Good governance principles of transparency, public participation, social responsibility, and review are applied to cases of stadium subsidies. The three case studies are: the Edmonton Oilers, the Sacramento Kings, and the Atlanta Braves. The article finds that good governance practices varied across the three cases. This mixed finding suggests that good governance principles could be applied to stadium subsidies in the future. Focusing on good governance principles could move the debates over stadium subsidies from a simple “good/bad” discussion, to a more nuanced discussion of how to improve the processes and outcomes for future public subsidies for stadiums.

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I. INTRODUCTION: THE MORE THINGS CHANGE. . .

After the COVID-19 pandemic shut fans out of sports stadiums for an extended length of time, it was reasonable to wonder what ongoing effects the shutdown would have on professional sports. There were immediate financial impacts as teams lost revenue due to a lack of fans, and possible knock-on effects on revenue sharing and the player markets.¹ There may have also been sporting impacts, such as a reduction in “home advantage” for teams playing in stadiums without fans.²

Despite the changes, one thing that has stayed the same is that various levels of government still provide significant sums of money

1. See Michael Drewes, Frank Daumann & Florian Follert, *Exploring the Sports Economic Impact of COVID-19 on Professional Soccer*, 22 *SOCCER & SOC'Y* 125, 127–28 (2021); see also KPMG, *The European Champions Report* (2021), https://footballbenchmark.com/documents/files/public/The_European_Champions_Report_2021.pdf [https://perma.cc/DN2Z-AQXS].

2. See Dane McCarrick, Merim Bilalic, Nick Neave & Sandy Wolfson, *Home Advantage During the COVID-19 Pandemic: Analyses of European Football Leagues*, 56 *PSYCHOLOGY OF SPORT & EXERCISE* 1, 9 (2021).

for professional sports stadiums. For example, in April 2022 alone, New York State provided \$600 million to finance the Buffalo Bills' new stadium,³ while the Maryland state legislature approved \$1.2 billion to upgrade the stadiums belonging to the Baltimore Orioles and the Baltimore Ravens in a packed weekend of lawmaking.⁴

These projects are examples of the ongoing public financing of stadiums in the United States. Even post-COVID-19, it seems that the public subsidizing of stadiums will continue for the foreseeable future. With that in mind, three research questions guide this Article. First, can principles of good governance be applied to agreements to publicly subsidize stadiums? Second, are cities being accountable to their citizens when it comes to stadium financing? Third, how might principles of good governance improve the process and substance of agreements to publicly subsidize stadiums to the benefit of the public?

To answer these questions, this Article applies principles of good governance to three case studies: the Atlanta Braves, the Sacramento Kings, and the Edmonton Oilers. A case study is an empirical method that seeks to investigate a contemporary phenomenon in-depth, and within its real-life context.⁵ This Article addresses the phenomenon of publicly subsidized stadiums. The particular case study method used here is an instrumental case study, in that it seeks to explore, and to better understand the applicability of good governance principles to stadium financing.⁶ The case studies themselves will focus on a documentary review of municipal procedures, and of contracts signed, for the public financing of the stadiums. Where required, news reports will supplement the primary documents.

The cases were selected from a group of stadiums whose construction was completed in 2016 and 2017. These dates were chosen for two reasons. First, there were seven stadiums completed in

3. See Jason Wolf, *Poloncarz: Bills' Owners Sought 100% Public Financing; Stadium Condition Impacted Talks*, BUFFALO NEWS (Apr. 11, 2022), https://buffalonews.com/news/local/poloncarz-bills-owners-sought-100-public-financing-stadium-condition-impacted-talks/article_8aec7816-b9c0-11ec-a3e1-7f9bd6d8ee11.html [https://perma.cc/2RZK-JXFA].

4. See David Collins, *Hogan Signs 79 Bills into Law, Proclaiming Most Successful Legislative Session*, WBALTV (Apr. 12, 2022, 6:08 PM), <https://www.wbaltv.com/article/Maryland-governor-larry-hogan-bill-signing-2022/39705142#> [https://perma.cc/7PAV-QX3B].

5. See ROBERT K. YIN, *Case Study Research: Design and Methods* 20, 21 (4th ed. 2009).

6. See DAWSON R. HANCOCK & BOB ALGOZZINE, *Doing Case Study Research* 16, 32 (2006) <http://ndl.ethernet.edu.et/bitstream/123456789/72900/1/23PDF.pdf> [https://perma.cc/PT5C-E645].

those two years, providing a useful sample size. Second, when assessing the impact of the stadium, sufficient time has passed to be able to make observations divorced from the immediate debates of the time. The seven stadiums built at that time were in Atlanta/Cobb County (2017), Atlanta/downtown (2017), Detroit (2017), Edmonton (2016), Las Vegas (2016), Minneapolis (2016), and Sacramento (2016).

In reducing the cases to Atlanta/Cobb County, Sacramento, and Edmonton, two factors were considered. First, that the stadiums received public subsidies. Second, that the public subsidies come one from one source; ideally the municipality, for ease of comparison. The Las Vegas stadium was built solely with private money,⁷ removing it from consideration. Meanwhile, the stadiums in Detroit⁸ and Minneapolis⁹ were subsidized with a mix of municipal funds and funding at the state level, removing them from consideration. Finally, the football stadium built in downtown Atlanta did receive money in municipal bonds, but is also owned by the Georgia World Congress Authority, a state agency, which is also effectively subsidizing the stadium through an exemption from property taxes, removing it from consideration.¹⁰ After the elimination of the above cases, this leaves Atlanta/Cobb County (hereinafter simply referred to as “Atlanta” or “Cobb County” as needed), Edmonton, and Sacramento as the three cases examined.

Comparing three stadiums, as opposed to a single case, can test the boundaries of the principles through a small replication of the

7. See Catherine Campo, *Taxpayer Money Should be Spent on Public Services – not Stadiums*, says Las Vegas Knights Owner Bill Foley, CNBC (Dec. 24, 2017, 12:00 PM), <https://www.cnbc.com/2017/12/22/las-vegas-hockey-team-owner-tax-dollars-are-better-spent-on-public-services.html> [<https://perma.cc/DE7U-UT7C>].

8. See *Little Caesars Arena’s Funding Mix Not Without Critics*, THE DETROIT NEWS (Oct. 4, 2017, 11:05 PM), <https://www.detroitnews.com/story/news/local/detroit-city/2017/10/04/little-caesars-arena-financing/106313428/> [<https://perma.cc/83CM-GCSK>] (explaining that Little Caesars Arena was subsidized in part by city of Detroit and Michigan Strategic Fund).

9. See Rochelle Olson, *U.S. Bank Stadium Reserve Predicted to Balloon to Nearly Half a Billion Dollars by 2025*, STARTRIBUNE (Dec. 3, 2020, 9:53 PM), available at <https://www.startribune.com/u-s-bank-stadium-reserve-predicted-to-balloon-to-nearly-half-a-billion-dollars-by-2025/573277531/> [<https://perma.cc/K7Y2-NVNK>] (explaining that US Bank Stadium was subsidized in part by city of Minneapolis, and in larger part by state of Minnesota).

10. See, e.g., *Love et al. v Fulton County Board of Tax Assessors et al.*, 311 Ga. 682 (2021) (dismissing claim that sought to compel collection of taxes by Fulton County from Mercedes-Benz Stadium); see also Arielle Kass, *Lawsuit: Mercedes-Benz Stadium Should be Paying Property Taxes*, ATLANTA JOURNAL-CONSTITUTION (Jan. 22, 2019), <https://www.ajc.com/news/local-govt—politics/group-claims-mercedes-benz-stadium-should-paying-property-taxes/FgHL3su1jUgnXOk9Lf8XeJ/> [<https://perma.cc/MS86-X4TW>].

study.¹¹ It is also helpful to look at stadiums in both Canada and the USA. Most cases of public financing of stadiums occur in the United States. This is largely due to the much larger number of professional teams based in the United States than in Canada. However, public subsidization of stadiums has migrated north to Canada in recent years. Three National Hockey League (“NHL”) arenas were built in the 1990s in Vancouver, Toronto, and Montreal. These arenas were privately financed. However, Edmonton’s publicly subsidized arena is the first publicly subsidized stadium for an existing NHL team in Canada in recent memory.¹² It has served as a bellwether for Canadian NHL teams, as NHL teams in Calgary and Ottawa have turned to Edmonton’s stadium deal as a template for their negotiations.¹³ Although Canada and the United States have different legal frameworks that affect stadium subsidies, this article focuses on governance principles, lessening the impact of the different legal frameworks.

This Article will proceed over the following six parts. Part Two discusses the ongoing public subsidisation of stadiums for professional sports teams, despite the overwhelming evidence that the economic benefits are minimal, at best. Part Three sets out the application of good governance to sports, generally. Part Four outlines good governance principles and applies them to public financing of stadiums generally. Part Five applies these principles to the Atlanta, Sacramento, and Edmonton case studies. Part Six analyses the findings. Part Seven concludes.

II. PUBLIC FINANCING OF STADIUMS CONTINUES DESPITE DISAPPOINTING OUTCOMES

Publicly subsidized stadiums have been part of sport for over a century. Beginning with a stadium in San Diego in 1914, other

11. See generally, YIN, *supra* note 5, at 54–58.

12. See Jason van Rassel, *A Look at Canadian Stadiums Built with Public Funds*, CALGARY HERALD (Aug. 18, 2015), <https://calgaryherald.com/news/local-news/a-look-at-canadian-stadiums-built-with-public-funds> [https://perma.cc/7UWM-MT4X]. Although Winnipeg used public funds for its arena, it did not house an NHL team at the time.

13. See, e.g., Bruce Garrioch, *Ottawa Senators Can learn Plenty by Looking at Edmonton Oilers’ New Rink*, OTTAWA SUN (Nov. 12, 2016), <https://ottawasun.com/2016/11/12/ottawa-senators-can-learn-plenty-by-looking-at-edmonton-oilers-new-rink/wcm/7c935074-3a84-4782-b6fa-6d6a87ee121d> [https://perma.cc/A6XH-GFAN]; see also Jason Markusoff, *The Calgary Flames Dig a Deeper Hole in Arena Debate*, MACLEAN’S (Sept. 15, 2017), <https://www.macleans.ca/news/canada/the-calgary-flames-dig-a-deeper-hole-in-arena-debate/> [https://perma.cc/4ZQW-CEV9] (arguing that Flames’ CEO Ken King was “stuck on the glory of Edmonton’s arena deal.”).

early-century publicly subsidized stadiums include the Rose Bowl (Pasadena, California), Los Angeles Coliseum, and Soldier Field (Chicago), all of which were built in the early 1920s.¹⁴ However, it was not until the 1950s that public subsidization of stadiums took off.¹⁵ Teams began to relocate from one municipality to another, often from eastern cities that hosted two teams to western cities that had none. The boom was kicked off by a city in the Midwest: Milwaukee. In 1953, Milwaukee completed the construction of a baseball stadium. The Boston Braves moved to Milwaukee later that year, where they would remain until leaving for Atlanta before the 1966 baseball season. Milwaukee's stadium was financed by municipal bonds and is the first example of the modern-day approach to public subsidization of stadiums.¹⁶ Milwaukee's success encouraged other municipalities to approve bonds to build new stadiums, or refurbish existing stadiums, in their efforts to attract major league teams.¹⁷

In the decades following Milwaukee's issuance of bonds, the toolkit used by municipalities to subsidize stadiums has expanded. Municipal bonds remain the primary tool to publicly subsidize stadiums. Municipal bonds are attractive to investors because the income generated by them is tax-exempt.¹⁸ The attractiveness of municipal bonds therefore lowers interest rates on the bonds, providing a low-cost source of borrowing money for stadiums.¹⁹ Bonds may be repaid by municipalities through general tax revenue, or through revenue generated by the project, depending on the type of bond issued.²⁰ A second tool that municipalities use to subsidize stadiums is the imposition of new taxes. These taxes may be levied on the general population, for example through a property tax, or a local sales tax.²¹ However, municipalities tend to impose limited

14. See JAMES T. BENNETT, *They Play, You Pay: Why Taxpayers Build Ballparks, Stadiums, and Arenas for Billionaire Owners and Millionaire Players*, at 67 (2012); see also Roger I. Abrams, *Hardball in City Hall: Public Financing of Sports Stadiums*, 3 PACE INTELL. PROP., SPORTS & ENT. L.F. 164, 167 (2013).

15. See Abrams, *supra* note 14, at 168.

16. See BENNETT, *supra* note 14, at 64.

17. See BENNETT, *supra* note 14, at 64–65.

18. See 26 USC § 103 (2020).

19. See Courtenay Gesualdi, *Sports Stadiums as Public Works Projects: How to Stop Professional Teams from Exploiting Taxpayers*, 13 VA. SPORTS & ENT. L.J. 281, 283–85 (2014).

20. See U.S. Securities and Exchange Commission, *Investor Bulletin: Municipal Bonds – An Overview* (Feb. 1, 2018), https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_munibondsoverview [<https://perma.cc/7QB9-MGCW>].

21. See Andrew H. Goodman, *The Public Financing of Professional Sports Stadiums: Policy and Practice*, 9 SPORTS LAW. J. 173, 194 (2002).

taxation schemes such as “sin taxes” on tobacco and alcohol sales, taxes on hotel stays—shifting the burden to non-residents, or indirect taxes through lottery games.²²

Other tools used by municipalities avoid raising cash directly. Municipalities may provide the use of stadiums to teams on a rent-free basis.²³ A convoluted version of this rent relief occurred in Calgary in the mid-1980s when the city gave annual grants of \$500,000 per year to the non-profit organization that operated McMahon Stadium, to reduce the rent for the struggling CalgaryStampeders football team.²⁴ Teams who own their own stadium may pay reduced property taxes.²⁵ Finally, municipalities may use eminent domain—the taking of private land for public use—to secure land at a lower cost for stadiums.²⁶

The amount of public subsidies is in the hundreds of millions, if not billions, of dollars per year. In 2005, Judith Grant Long estimated the average public subsidy for a stadium at \$175 million.²⁷ In a thirteen-year period from 2005–2017, Timothy Kellison and Michael Mondello found thirty-nine stadiums that were built, or were planned to be built, in part with public financing—a rate of three publicly subsidized stadiums per year.²⁸ Twenty-nine of these stadiums were built with 50% public funding or more.²⁹ Even bankruptcy does not prevent a municipality from funding stadiums.

22. See *id.* at 196; see also Abrams, *supra* note 14, at 181.

23. See Philip Weinberg, *Eminent Domain for Private Sports Stadiums: Fair Ball or Foul*, 35 ENV'T L. 311, 320 (2005) (“Though the stadium remains in city ownership, the National Football League’s Baltimore Ravens use it rent-free and receive half the revenue from non-football events held there.”); see also Robert A. Baade & Richard F. Dye, *The Impact of Stadiums and Professional Sports on Metropolitan Area Development*, 21 GROWTH & CHANGE 1, 3 (1990) (“Thus, the number of cities seeking professional sports franchises outnumbers the supply of teams. In this seller’s market, municipalities have been known to offer their facilities rent-free to teams they are courting or trying to retain.”).

24. See F.A. Laux, *Municipal Bonuses and Tax Exemptions to Entice Private Developments*, 25 ALBERTA L. REV. 224, 224 (1987).

25. See, e.g., Judith Grant Long, *Full Count: The Real Cost of Public Subsidies for Major League Sports Facilities*, 6 J. SPORTS ECON. 119, 137 (2005) (“Sports facilities rarely yield property taxes for their municipal hosts, and these foregone revenues represent a significant and uncounted public cost. . . . A facility need not be publicly owned to avoid paying property taxes: Eighty-five cases receive property tax exemptions, whereas only 67 are publicly owned.”).

26. See generally Peter Montine, *Forced Turnovers: Using Eminent Domain to Build Professional Sports Venues*, 9 WASHINGTON J.L. TECHNOLOGY & ARTS 331.

27. See Long, *supra* note 25, at 135.

28. See Timothy B. Kellison & Michael J. Mondello, *Civic Paternalism in Political Policymaking: The Justification for No-Vote Stadium Subsidies*, 28 J. SPORT MGMT. 162, 164 (2014).

29. See *id.*

In July 2013, the city of Detroit filed for Chapter 9 bankruptcy protection—a form of bankruptcy protection specific to municipalities.³⁰ In doing so, Detroit became the largest municipality in American history to file for bankruptcy protection.³¹ Six days later, the city obtained preliminary approval from Michigan state authorities to sell \$450 million in bonds to finance a new hockey arena.³² In the end, the public subsidized \$324.1 million of the \$862.9 million arena.³³

How can such large sums of money be justified? Municipal leaders justify these subsidies by claiming that the new or refurbished stadium will create an economic boon that will benefit the municipality as a whole. However, economists that have studied public subsidization of stadiums have found these claims to be unsubstantiated.³⁴ Dennis Coates and Brad R. Humphries canvassed the economic literature examining the economic impact of stadiums on local income, earnings, and employment, and found that economists consistently found that stadiums created no “measurable economic impact on the economy”.³⁵ When it comes to job creation, a 2016 study by Kaitlyn Harger, Brad R. Humphries, and Amanda Ross found that there is “no evidence of any effect, positive or negative, of new sports facilities on new businesses around these facilities,” and at best found “weak evidence of higher employment at new nearby businesses after the opening of a new sports facility

30. See 11 USC §§ 901–946 (2020).

31. See Monica Davey & Mary Williams Walsh, *Billions in Debt, Detroit Tumbles into Insolvency*, (July 18, 2013) at A1, N.Y. TIMES, <https://www.nytimes.com/2013/07/19/us/detroit-files-for-bankruptcy.html> [<https://perma.cc/HP8S-LT4Q>].

32. See *Michigan Board Oks \$450 Million Detroit Hockey Arena Bonds*, REUTERS (Sept. 17, 2014), <https://www.reuters.com/article/us-usa-detroit-arena-bonds/michigan-board-oks-450-million-detroit-hockey-arena-bonds-idUSKBN0HC27320140917> [<https://perma.cc/ZTK8-E38Z>].

33. See *Final Meeting Agenda: Resolution Approving Amendments to the City of Detroit Downtown Development Authority Restated Tax Increment Financing Plan and Development Plan for Development Area No. 1, Exhibit A: Redlined Version of the Plan Amendments 216*, MICHIGAN STRATEGIC FUND BOARD (2017), <https://www.michiganbusiness.org/4a825a/globalassets/documents/msf-board/msf-board-packets/final-msf-packet-may-23-2017.pdf> [<https://perma.cc/V2JL-57YL>] (providing breakdown of Events Center financing).

34. See, e.g., Dennis Coates, *Stadiums and Arenas: Economic Development or Economic Redistribution?* (2007) 25 CONTEMP. ECON. F. 565, 575 (2007).

35. See Dennis Coates & Brad R. Humphreys, *Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?*, 5:3 ECON. J. WATCH 294, 302 (2008); see also Robert A. Baade, *Professional Sports as Catalysts for Metropolitan Economic Development*, 18:1 J. URB. AFF. 1, 15 (1996); see also Roger G. Noll & Andrew Zimbalist, *Sports, Jobs, and Taxes: The Real Connection*, in SPORTS JOBS & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS 494, 496 (1997) (“The studies in this volume uniformly conclude that metropolitan and central city economic development is not likely to be affected by a sports team or facility.”).

compared to new businesses located farther from the facility.”³⁶ Whether the presence of a sports team enhances nearby property values is contested.³⁷ Yet, the consensus appears to be that at best, a stadium may compliment ongoing economic development in a downtown area of a city—but that stadiums are not, in and of themselves, catalysts for such development.³⁸

More recently, proponents of subsidized stadiums have claimed that a new stadium creates an overall psychic well-being, through civic pride. Although a team does generate some measure of civic pride, the value of the well-being created does not rise to the level of subsidies for stadiums. In 2008, Bruce Johnson et al. found that the public good value generated by the National Football League’s (“NFL”) Jacksonville Jaguars was about \$36.5 million, and a National Basketball Association (“NBA”) team would be less than \$22.8 million.³⁹ In 2012, Bruce Johnson et al. found that new hockey stadiums in Edmonton and Calgary would provide about \$33.2 million in civic pride and quality-of-life benefits for residents.⁴⁰ These sums are far less than the hundreds of millions of dollars of subsidies that are provided to stadiums. Furthermore, while the benefit of civic pride may be felt across the municipality, it is unlikely that all residents are willing to pay to realize that benefit.⁴¹

36. See Kaitlyn Harger, Brad R. Humphries & Amanda Ross, *Do New Sports Facilities Attract New Businesses?*, 17 J. SPORTS ECON. 483, 484–85 (2016).

37. See Xia Feng & Brad R. Humphreys, *The Impact of Professional Sports Facilities on Housing Values: Evidence from Census Block Group Data*, 3 CITY, CULTURE & SOC’Y 189, 199 (2012) (examining census block groups within five miles of stadiums in USA and finding increases in property values); see also Carolyn A. Dehring, Craig A. Depken & Michael R. Ward, *The Impact of Stadium Announcements on Residential Property Values: Evidence from a Natural Experiment in Dallas-Fort Worth*, 25 CONTEMP. ECON. POL’Y. 627, 637–38 (2007) (examining stadium announcements and finding near-zero effect on property values); see also Brad R. Humphreys & Adam Nowak, *Professional Sports Facilities, Teams and Property Values: Evidence from NBA Team Departures*, 66 REG’L SCI. & URB. ECON. 39, 47 (2017) (finding that relocation of teams away from Seattle and Charlotte led to increase in nearby property values, suggesting that presence of teams may create “disamenities”).

38. See Geoffrey Propheter, *Are Basketball Arenas Catalysts of Economic Development?*, 34 URB. AFF. 441, 457 (2012).

39. See Bruce K. Johnson, Michael J. Mondello & John C. Whitehead, *The Value of Public Goods Generated by a National Football League Team*, 21 J. SPORT MGMT. 123, 132 (2007).

40. See Bruce K. Johnson, John C. Whitehead, Daniel S. Mason & Gordon J. Walker, *Willingness to Pay for Downtown Public Goods Generated by Large, Sports-Anchored Development Projects: The CVM Approach*, 3 CITY, CULTURE & SOC’Y 201, 207 (2012).

41. See Peter A. Groothuis, Bruce K. Johnson & John C. Whitehead, *Public Funding of Professional Sports Stadiums: Public Choice or Civic Pride?*, 30 E. ECON. J. 515,

In addition to the shortfall of the claimed benefits, professional sporting stadiums can bring about detrimental impacts to a city. Timothy Kellison has summarized some of the environmental impacts of a stadium as including transportation to-and-from games, the consumption of individually-packaged food and drink, and electricity usage.⁴² Kellison also noted that scholars found an increase in traffic delays, increased noise, and reduced greenspace, and “dead zones” around the stadium on non-game days that attract criminal activity.⁴³

Despite the findings above, public subsidization of stadiums has continued unabated. One can understand how Kevin Delaney and Rick Eckstein conclude that public authorities “are clearly predisposed toward building publicly financed stadiums”.⁴⁴ Yet, Delaney and Eckstein provide a caveat that although this may be the default position of public authorities, public subsidies for stadiums is not an inevitable outcome.⁴⁵

Because the costs of public stadiums outweigh the benefits, legal scholars have called for a halt to the subsidies and have proposed various mechanisms that would make public subsidies less attractive. One suggestion has been to end the tax-exempt status for income from municipal bonds in the USA, reducing their attractiveness to investors and to municipalities.⁴⁶ Another suggestion has been to prohibit the use of eminent domain as a tool to obtain land for stadiums by narrowing the definition of “public use” to exclude stadiums.⁴⁷ Marc Edelman has suggested that Congress threaten to remove antitrust protection extended to leagues under the *Sports Broadcasting Act*⁴⁸ for leagues whose teams accept public funding from stadiums, but do not provide a share of the revenues

525 (2004) (finding that “only a minority of respondents support public funding for football and baseball stadiums or to keep the Penguins in Pittsburgh”).

42. See TIMOTHY KELLISON, *Considering Environmental Justice in Sport: Green Fields, Gray Skies*, SPORT STADIUMS AND ENVIRONMENTAL JUSTICE 1, 8 (2023) (citing various studies).

43. See *id.* at 9–10.

44. See Kevin J. Delaney & Rick Eckstein, *Urban Power Structures and Publicly Financed Stadiums*, 22 SOCIO. F. 331, 334 (2007).

45. See *id.*

46. See David Schein, James Philips & Caroline Rider, *American Cities Held Hostage: Public Stadiums and Pro Sports Franchises*, 20 RICH. PUB. INT. L. REV. 63, 91 (2017) Gesualdi, *supra* note 19, at 283.

47. See Schein, et al., *supra* note 46, at 92–93; see also Weinberg, *supra* note 23, at 320 (arguing that professional sports stadiums are not a “public use”).

48. 15 U.S.C. § 1291 (2020).

to the municipality.⁴⁹ Others have gone further, suggesting that the cartel of North American sports needs to be dismantled, replaced by a promotion and relegation system, similar to that of Europe. Doing so would bring more teams in more cities into the leagues, and reduce the bargaining power of teams to demand subsidies, as relocation to another city would become less realistic.⁵⁰ Others have made calls for undefined federal regulation or legislation.⁵¹ Finally, Kukui Claydon suggests the creation of a “Public Advocate Counsel” that would be a party to negotiations between the city and the team, and provide a neutral voice.⁵²

Unfortunately, policymakers have not adopted these suggestions. The public subsidization of stadiums on a large scale was occurring just as the US Congress began paying attention to sport, and sport’s antitrust status.⁵³ However, with some exceptions, legislators have avoided addressing the issue. Bills were introduced in the US House of Representatives and the US Senate in 2017, and again in 2019.⁵⁴ They appear likely to meet the same fate as 1999’s *Stadium Financing and Relocation Act*⁵⁵—an ignominious death, remarked upon only by legal commentators.⁵⁶ In late 2017, as the US Congress made significant changes to the *US Tax Code*, one of the proposed changes was ending the tax-exempt status of income from municipal bonds that were used for stadiums. However, the final

49. See Marc Edelman, *Sports and the City: How to Curb Professional Sports Teams’ Demands for Free Public Stadiums*, 6 RUTGERS J.L. & PUB. POL’Y 35, 74–76 (2008).

50. See David Haddock, Tonja Jacobi & Matthew Sag, *League Structure & Stadium Rent-Seeking—The Role of Antitrust Revisited*, 65 FLORIDA L. REV. 1, 60–61 (2013).

51. See Daniel McClurg, *Leveling the Playing Field: Publicly Financed Professional Sports Facilities*, 53 WAKE FOREST L. REV. 234, 264 (2018); see also Nicholas Baker, *Playing a Man Down: Professional Sports and Stadium Finance—How Leagues and Franchises Extract Favorable Terms From American Cities*, 59 B.C. L. REV. 208, 312–14 (2018).

52. See Kukui Claydon, *The Real Team Players: Legal Ethics, Public Interest, and Professional Sports Subsidies*, 27 THE GEO. J. LEGAL ETHICS 451, 466–70 (2014).

53. See BENNETT, *supra* note 14, at 12 (discussing legislation in the 1950s and its approach to antitrust law).

54. See No Tax Subsidies for Stadiums Act of 2019, H.R. 2446, 116th Cong. (2019); see also A Bill to Amend the Internal Revenue Code of 1986 to Ensure that Bonds used to Finance Professional Stadiums are not Treated as Tax-Exempt Bonds, S. 1242, 116th Cong. (2019); see also, No Tax Subsidies for Stadiums Act, H.R. 811, 115th Cong. (2017); see also Eliminating Federal Tax Subsidies for Stadiums Act of 2017, S. 1342, 115th Cong. (2017).

55. Stadium Financing and Relocation Act, S. 952, 106th Cong. (1999). See generally Martin J. Greenberg, *Stadium Financing and Franchise Relocation Act of 1999*, 10 MARQ. SPORTS L.J. 383 (2000) (discussing the Stadium Financing and Relocation Act).

56. See, e.g., Greenberg, *supra* note 55; see also Marc D. Oram, *The Stadium Financing and Relocation Act of 1999*, VA. J. SPORTS & ENT. L. 184, 211 (2000).

reform package saved the tax-exempt status of public bonds for stadiums.⁵⁷

One piece of legislation that may serve as a means to alter the public subsidy regime is Ohio's "Art Modell Law". The law was enacted in 1996 in the wake of the NFL's Cleveland Browns' relocation to Baltimore under then-owner Art Modell. The law states:

No owner of a professional sports team that uses a tax-supported facility for most of its home games and receives financial assistance from the state or a political subdivision thereof shall cease playing most of its home games at the facility and begin playing most of its home games elsewhere unless the owner either:

(A) Enters into an agreement with the political subdivision permitting the team to play most of its home games elsewhere;

(B) Gives the political subdivision in which the facility is located not less than six months' advance notice of the owner's intention to cease playing most of its home games at the facility and, during the six months after such notice, gives the political subdivision or any individual or group of individuals who reside in the area the opportunity to purchase the team.⁵⁸

The law is an attempt to force teams who accept subsidies for their stadiums to remain at the stadium, although the team can still relocate if they provide sufficient notice and the team is not purchased by a local group. The law became the focus of a dispute between Ohio and the Columbus Crew soccer team. The Crew play in a "tax-supported facility". Amongst other subsidies, the Crew have received about \$5 million in funding to improve parking at the stadium, the stadium is exempt from state property tax, and the land is leased at a below-market rate.⁵⁹ In October 2017, the owner of the Crew announced that the team would move unless a new downtown stadium was built.⁶⁰ It soon came to light that the 2013

57. See, e.g., Ballard Spahr, *Public Finance Group, GOP Tax Overhaul Saves Private Activity Bonds and Stadium Bonds, Eliminates Advance Refundings and Tax Credit Bonuses*, BALLARD SPAHR LLP (Dec. 20, 2017), <https://www.jdsupra.com/legalnews/gop-tax-overhaul-saves-private-activity-95470/> [<https://perma.cc/QL3L-VKTP>].

58. OHIO REV. CODE Ann. § 6.7 (LexisNexis 2019).

59. See Complaint at para. 9, State ex rel. Ohio Ag v. Precourt Sports Ventures, No. 18-CV-001864, 2018 Ohio Misc. LEXIS 6293 (Ct. Com. Pl. May 8, 2018), available at <https://city-attorney.columbus.gov/pdf/press/crewsuit.pdf> [<https://perma.cc/7JLS-PKY2>].

60. See *id.* at para. 2.

agreement between the owner of the Crew and Major League Soccer contained a clause that had not been made public, allowing the Crew to relocate to Austin, Texas.⁶¹ The state initiated litigation to enforce the Art Modell Law.⁶² Before trial, a deal was struck to sell the Crew to a local ownership group that would keep the team in Ohio.⁶³

It seems that there is little appetite for legislators in Canada and the USA to pass legislation to halt the public financing of stadiums. The concern that this article addresses, then, is what to do about stadium projects as they go ahead, since when even a bankrupt municipality like Detroit will finance a stadium, public subsidies for stadiums almost seem inevitable. This Article fills the gap in the research by examining how public financing of stadiums may be improved for the benefit of the public, through the application of good governance principles.

III. A GOOD GOVERNANCE APPROACH TO OVERSIGHT OF SPORTS AND OF STADIUM DEALS

A. Governance and Good Governance

Governance, at its most fundamental level, refers to how policy is made and implemented.⁶⁴ In organizations, “governance is the system by which the elements of an organization are directed, controlled and regulated.”⁶⁵ Although governance has historically been labelled as an amorphous term that is popular precisely because it is ambiguous,⁶⁶ decades of governance research have worked to clarify the precise scope of governance, while allowing for flexibility in its application. In particular, governance discussions focus on the particulars of the structures of governance bodies and the processes of decision-making.⁶⁷

61. *See id.*

62. *See id.* at para. 5.

63. *See* Andrew Das, *M.L.S. Reaches Deal to Keep Crew in Columbus*, N.Y. TIMES, at D3 (Dec. 28, 2018), available at <https://www.nytimes.com/2018/12/28/sports/columbus-crew-mls-precourt.html> [<https://perma.cc/BX8Z-X4W9>].

64. *See* Arnout Geeraert, *The Governance Agenda and Its Relevance for Sport: Introducing the Four Dimensions of the AGGIS Sports Governance Observer*, ACTION FOR GOOD GOVERNANCE IN INTERNATIONAL SPORTS ORGANISATIONS 9, 9 (2013).

65. *See* RUSSELL HOYE, *Sport Governance*, ROUTLEDGE HANDBOOK OF SPORT POLICY 331, 331 (2014).

66. *See* B. Guy Peters, *Governance as Political Theory*, OXFORD HANDBOOK OF GOVERNANCE 19, 19 (2014).

67. *See* David Levi-Faur, *From ‘Big Government’ to ‘Big Governance’?*, OXFORD HANDBOOK OF GOVERNANCE 3, 10 (2014); *See also* Peters, *supra* note 66, at 22; *see also* Ulrich Karpen, *Good Governance*, 12 EUROPEAN J.L. REFORM 16, 16 (2010); *see also* Martijn van den Hurk & Koen Verhoest, *The Governance of Public–Private Partner-*

Governance differs from government, as government refers to the state apparatus, while governance includes actors and actions that are “within the state, by the state, without the state, and beyond the state.”⁶⁸ Policy-making and the provision of public goods have migrated from being under the purview of the state to a more amorphous mixture of state and non-state actors. This change has created a problem of accountability. State actors are subject to various *ex ante* formal accountability mechanisms such as procedural rules and constitutional limitations, and to various *ex post* accountability mechanisms such as judicial review and elections of legislators by citizens.⁶⁹ Meanwhile, non-state actors are not necessarily subject to these types of accountability mechanisms. Non-state actors are more likely to be accountable to smaller groups such as shareholders, or boards of directors, instead of the citizenry more generally. In assessing projects where a mixture of state and non-state actors, or even purely non-state actors, provide public goods, a governance approach is useful in that it “implies some conception of accountability.”⁷⁰ An effective governance system therefore:

[A]ssures stakeholders that the organization in which they have invested money, time, effort or their reputations, is subject to adequate internal checks and balances and that the people empowered to make decisions on behalf of the organization (the board) act in the best interests of the organization and its stakeholders.⁷¹

While governance is a broad framework that examines the accountability of an organisation, good governance is the operationalization of governance goals.⁷² Good governance aims to provide a more technical approach to addressing broad governance issues such as accountability, leadership, and anti-corruption.⁷³ Good governance is often established as sets of principles. These principles are varied, and are organisation- and context-specific, as can be

ships in Sports Infrastructure: Interfering Complexities in Belgium, 33:1 INT’L J. PROJECT MGMT. 201, 203 (2015); see also M.P. Ferreira-Snyman & G.M. Ferreira, *Global Good Governance and Good Global Governance*, 31 SOUTH AFRICAN Y.B. INT’L L. 52, 54 (2006).

68. See Levi-Faur, *supra* note 67, at 3.

69. See Peters, *supra* note 66, at 21.

70. See *id.* at 20.

71. See RUSSELL HOYE & GRAHAM CUSKELLY, *Sport Governance* 1, 4 (2007).

72. See Merilee Grindle, *Good Governance: The Inflation of an Idea*, PLANNING IDEAS THAT MATTER: LIVABILITY, TERRITORIALITY, GOVERNANCE, AND REFLECTIVE PRACTICE 259, 261 (2012).

73. See *id.* at 267.

seen in the various lists of good governance principles put forward by academics,⁷⁴ and by international and supra-national bodies,⁷⁵ amongst other organisations interested in good governance.

B. Governing Sport

Governance of sport is largely carried out through the “Olympic Movement”. The Olympic Movement is a collection of sporting organizations overseen by the International Olympic Committee (“IOC”).⁷⁶ The IOC works with National Olympic Committees, who oversee sport generally at the national level. International Federations govern their particular sport at a global level, who in turn work with National Federations that govern that particular sport at the national level. Numerous professional leagues work alongside International and National Federations. Athletes are also part of the Olympic Movement and its governance, through their representation on the IOC. Collectively, these bodies govern both their sport, and particular sporting events (e.g., the Olympic Games, the FIFA World Cup). Finally, two pan-sport regulatory bodies, the World Anti-Doping Agency, and the Court of Arbitration for Sport, oversee the actors within Olympic Movement in addressing anti-doping, and dispute resolution, respectively.⁷⁷

Although the Olympic Movement is responsible for overseeing most of world sport, with enormous impacts on the public from grassroots sports participation to the billions of dollars of sponsorship money spent on international sporting events, sports organisations are seen as unaccountable to the public. Sport’s governing bodies are often formed as not-for-profit associations, under the laws of Switzerland,⁷⁸ and as such are largely out of the reach of state governments. Additionally, sporting organisations have stoutly defended the “autonomy of sport”.⁷⁹ In particular, sporting

74. See Grindle, *supra* note 72, at 262; see also Karpen, *supra* note 67.

75. See Ferreira-Snyman, *supra* note 67, at 56–61.

76. See Int’l Olympic Comm., Olympic Charter, Rule 1.1 at 15 (2018), available at https://library.olympics.com/Default/doc/SYRACUSE/177766/olympic-charter-in-force-as-of-9-october-2018-international-olympic-committee?_lg=EN-GB [<https://perma.cc/A9R7-MFF8>].

77. See JEAN-LOUP CHAPPELET & BRENDA KÜBLER-MABBOTT, *The International Olympic Committee and the Olympic System: The Governance of World Sport* 9–10 (2008) (providing further discussion of Olympic Movement, and even-broader “Olympic System”); see also RYAN GAUTHIER, *The International Olympic Committee, Law, and Accountability* 50–51 (2017).

78. See Int’l Olympic Comm., Olympic Charter, Rule 15.1 (2018); see also GAUTHIER, *supra* note 77, at 74.

79. See JEAN-LOUP CHAPPELET, *The Autonomy of Sport and the EU*, RESEARCH HANDBOOK ON EU SPORTS LAW AND POLICY 157 (2018).

organisations have called for the resistance to political pressure in the world of sport.⁸⁰ This has created a situation described by Mark Pieth, chair of FIFA's independent governance reform committee, as a "world of pure self-regulation, untouched by threats of public sector intervention."⁸¹

Academics and practitioners are increasingly applying good governance principles to sport. However, the reality of sport governance is more complex than a world where sporting organisations simply defend their autonomy from the interventionist hands of the public. Increasingly, sport is governed through networks, with sporting organisations increasingly playing a "steering" role, working in conjunction with states, businesses, and the public.⁸² Governments have been involved in sport for decades, such as through funding sport. More recently, governments are becoming more directly involved in governing sport, such as having politicians, or those with obligations to politicians, serve on boards of National Olympic Committees,⁸³ or demanding oversight by requiring that sporting organizations report to them. Notably for this article, governments have increasingly required sporting organisations to adopt codes of good governance.⁸⁴ In a similar vein, the European Union has also called for implementation of good governance principles in sport.⁸⁵

North American professional sport is largely outside the aegis of the Olympic Movement, but is engaged in a similar defence of its autonomy from government intervention in sport. Private, closed leagues govern their particular sport. Similar to Europe, a comprehensive regulatory policy does not exist for professional sport in North America. Instead, legislation is periodically enacted that ad-

80. See, e.g., Int'l Olympic Comm., Olympic Charter, Rule 27.6 (2018).

81. See Mark Pieth, *Introduction: Governing FIFA*, in REFORMING FIFA 14 (2014).

82. See Arnout Geeraert, Michaël Mrkonjic & Jean-Loup Chappelet, *A Rationalist Perspective on the Autonomy of International Sport Governance Bodies: Towards a Pragmatic Autonomy in the Steering of Sports*, 7 INT'L J. SPORT POL'Y & POL. 473, 483 (2015).

83. See MADS A. WICKSTRØM & STINE ALVAD, *AUTONOMY IN NATIONAL OLYMPIC COMMITTEES: AN AUTONOMY INDEX 20* (2017).

84. See e.g., Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, Pub. L. No. 116-189, § 5 (2020). See also Søren Bang, *Governments Tighten Control of National Sport Organisations*, PLAYTHEGAME (Aug. 12, 2016), http://www.playthegame.org/news/news-articles/2016/0249_governments-tighten-control-of-national-sport-organisations/ [<https://perma.cc/6U4A-3482>] (providing examples of other jurisdictions that have seen governments increase oversight over sport including Australia, UK, and Belgium).

85. See Borja García & Mads de Wolff, *European Law and the Governance of Sport*, in RESEARCH HANDBOOK ON EU SPORTS LAW AND POLICY 287, 302-04 (2018).

dresses particular issues, such as the application of antitrust law,⁸⁶ or the scope of labour law's application.⁸⁷ Congress involves itself in sport through sporadic Congressional hearings, such as on steroid use in baseball,⁸⁸ concussions in football,⁸⁹ and corruption in global soccer.⁹⁰ Judicial intervention is also limited, as many disputes are submitted to private arbitration as mandated by the league constitution or the collective bargaining agreement.⁹¹

Although governance principles have not often been applied to North American professional sport, they are gaining some traction amongst those who study sport. Mark Rosentraub broadly considered the governance of baseball in North America, and its relationship with relevant stakeholders.⁹² Textbooks on sport management also consider governance in North American sport.⁹³ More radically, some recent scholars have examined outright regulation of professional sport.⁹⁴ Perhaps the late arrival of governance to North American sport is due to governance principles

86. See *Sports Broadcasting Act of 1961*, 15 USC §§ 1291–1295 (2019) (exempting professional sports from antitrust law when it comes to joint sales of broadcasting rights by leagues); see also *Curt Flood Act of 1998*, 15 USC § 26b (subjecting Major League Baseball to antitrust law in regard to employment of baseball players).

87. See *Save America's Pastime Act of 2018*, 29 USC § 213(a)(19) (2019) (exempting Minor League Baseball players from minimum wage requirements under Fair Labor Standards Act).

88. See *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the House Committee on Government Reform*, 109th Cong. (2005).

89. See, e.g., *Legal Issues Relating to Football Head Injuries: Hearing Before the House Committee on the Judiciary*, 111th Cong. (2010).

90. See *Examining the Governance and Integrity of International Soccer: Hearing Before the Subcommittee on Consumer Protection, Product Safety, Insurance and Data Security of the Senate Committee on Commerce, Science, and Transportation*, 114th Cong. (2015).

91. See, e.g., *Nat'l Football League Mgmt. Council v. Nat'l Football League Players Ass'n*, 820 F.3d 527 (2d Cir. 2016) (rejecting challenge to disciplinary procedures used by National Football League Commissioner in part based on limited grounds for review of procedures set out under collective bargaining agreement).

92. See Mark S. Rosentraub, *Governing Sports in the Global Era: A Political Economy of Major League Baseball and its Stakeholders*, 8 IND. J. GLOBAL LEG. STUD. 121, 121 (2000) (identifying stakeholders such as international associations, professional leagues, states, club owners, players, fans, affected businesses, and society broadly).

93. See LINDA A. SHARP, ANITA M. MOORMAN & CATHRYN L. CLAUSSEN, *SPORT LAW: A MANAGERIAL APPROACH*, (3d ed. 2017) at 274–90; see generally, MARY M. HUMS & JOANNE C. MACLEAN, *GOVERNANCE AND POLICY IN SPORT ORGANIZATIONS* (3d ed. 2017) at xiv.

94. See, e.g., Nathaniel Grow, *Regulating Professional Sports Leagues*, 72 WASH. & LEE L. REV. 573, 641 (2015); see also Dionne L. Koller, *Putting Public Law into 'Private' Sport*, 43 PEPP. L. REV. 681, 730 (2015); see also James Masteralexis, Lisa Masteralexis & Kevin Snyder, *Enough is Enough: The Case for Federal Regulation of Sport Agents* 20 JEFFREY S. MOORAD SPORTS L.J. 69, 77 (2013).

being more intuitive to an examination of international sporting federations and national sporting bodies. These organisations serve a broad public purpose in governing sport from the grassroots to the professional leagues. In contrast, North American professional sport is a closed business that has little direct authority over grassroots sport. Grassroots sport in North America is governed by a mixture of national sporting federations connected to the Olympic Movement, similar to Europe, but also by educational institutions (through the National Collegiate Athletic Association in the United States, and U Sports in Canada), or through private organizations (such as Pop Warner football in the USA). As such, professional sport in North America has a narrower regulatory mandate than international or national sports federations.

I suggest that good governance principles are readily applicable to North American professional sport. Governance is often applicable to actors that play some sort of public role, and North American professional sports leagues play that public role, although not as extensive as that played by the members of the Olympic Movement. While North American professional sports leagues may not have a formal public regulatory role to play, their monopoly position in sport does make them the *de facto* regulators of that sport. For instance, when one of the professional leagues adopts a rule, the other, developmental leagues often follow that rule. Even if one views North American professional leagues as private actors, with minimal or no public role, the concept of corporate governance provides a clear example of governance applied to private actors.⁹⁵

The public financing of stadiums is similarly ripe for the application of good governance principles. Although principles of good governance are often applied to the actions of organisations, they may also be applied to projects,⁹⁶ such as stadiums. Regarding publicly subsidized stadiums, the public interest is directly implicated. Publicly subsidized stadiums are likely to face the challenges of

95. See Karpen, *supra* note 67, at 17.

96. See, e.g., Mills Bruzelius, Bent Flyvbjerg & Werner Rothengatter, *Big Decisions, Big Risks. Improving Accountability in Mega Projects*, 9 *TRANSP. POL'Y* 143, 148 (2002) (examining principles of transparency, performance specifications, explicit formulation of regulatory regime, and involvement of risk capital in making mega-projects more accountable); see also BENT FLYVBJERG, NILS BRUZELIUS & WERNER ROTHENGATTER, *MEGAPROJECTS AND RISK: AN ANATOMY OF AMBITION* 5 (2003) (discussing other multi-billion dollar public-private partnership projects throughout Europe).

other public-private partnerships, such as shortcomings in transparency or public consultation.⁹⁷

Governance principles have been applied to public-private partnerships regarding sport infrastructure in Flanders, Belgium.⁹⁸ The situation in Flanders differs from the construction of stadiums for professional sports in North America, as Flanders sought to rebuild a broad swath of its sports infrastructure, which differs from a single subsidy granted to a professional team. Nevertheless, the study found that the projects suffered governance shortfalls as the governments created delays by acting before they had legal authority to do so, and set the prices they would pay the private partners for the facilities below market value.⁹⁹ This highlights some of the problems in the “governance, complexities, and performance” of public-private partnerships generally.¹⁰⁰ This article builds on the sports governance literature and the stadium-financing literature by applying good governance principles to publicly subsidized sports stadiums in North America. The particular principles that will be applied are discussed in the following section.

IV. GOOD GOVERNANCE PRINCIPLES AND STADIUM FINANCING

The four principles of good governance that I will apply to publicly subsidized stadiums are transparency, public participation, review, and social responsibility. While any number of principles of good governance could be used, these four principles are similar to those already applied to sports organisations, in particular by PlaytheGame’s Sports Governance Observer.¹⁰¹ These four principles are also similar to those used by Basic Indicators for Better Governance in International Sport,¹⁰² those that guide the Euro-

97. See UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE, *GUIDEBOOK ON PROMOTING GOOD GOVERNANCE IN PUBLIC-PRIVATE PARTNERSHIPS* 59 (2008).

98. See Martjin Van den Hurk and Koen Verhoest, *The Governance of Public-Private Partnerships in Sports Infrastructure: Interfering Complexities in Belgium*, 33:1 INT’L J. PROJECT MGMT. 201 (2015).

99. See *id.* at 206–07.

100. See *id.* at 210.

101. See ARNOUT GEERAERT, *SPORTS GOVERNANCE OBSERVER 2015: THE LEGITIMACY CRISIS IN INTERNATIONAL SPORTS GOVERNANCE* 36 (2015) (using transparency, democracy, checks and balances, and solidarity).

102. See Jean-Loup Chappelet & Michaël Mrkonjic, *Basic Indicators for Better Governance in International Sport (BIBGIS): An Assessment Tool for International Sport Governing Bodies*, 9 (2003), https://serval.unil.ch/resource/serval:BIB_7BDD210D3643.P001/REF.pdf [<https://perma.cc/N6FW-6HZ4>] (using organizational transparency, reporting transparency, stakeholders’ representation, democratic process, control mechanisms, sport integrity, and solidarity).

pean Union's work in sport governance,¹⁰³ and those that have been applied to the hosting of the Olympic Games.¹⁰⁴ Each principle will be defined, and discussed as to how they are generally-applicable to publicly subsidized stadiums. In Part V, these principles will be applied to the case studies.

A. Transparency

Transparency is the degree to which the actions and intents of an actor are made visible or “readily knowable to interested parties.”¹⁰⁵ Transparent actions include making documents, hearings, and reasons for decisions available to the public. How this information is made public may be through active or passive measures. Active transparency occurs when an actor takes steps to make information public on its own initiative, such as maintaining a website or voluntary submission to third-party audits. Passive transparency occurs when interested parties compel the actor to reveal information. Examples include access-to-information requests, or the discovery process of a lawsuit.¹⁰⁶ If actors are to be held accountable, obtaining information on the actions of the actor is essential.

When it comes to public subsidization of stadiums, transparency has a mixed record. On the positive side, the construction of a new stadium, whether publicly subsidized or not, is newsworthy, and often covered in the local press. In addition, local governments, who ultimately approve the subsidies, are likely to have proceedings that are open to the public and recorded. Transparency is hampered by the complexity of public subsidies. Since subsidies are rarely a simple cash transfer, but are instead often a

103. See *Good Governance*, EUROPEAN COMMISSION: SPORT (June 25, 2018) https://ec.europa.eu/sport/policy/organisation-of-sport/good-governance_en [<https://perma.cc/8G5X-RB8E>] (listing “democracy, transparency, accountability in decision-making, and inclusiveness in the representation of interested stakeholders” as primary principles of good governance).

104. See GAUTHIER, *supra* note 77, at 112–20 (applying transparency, public participation, and review to host city selection process used for Olympic Games).

105. See Thomas N. Hale, *Transparency, Accountability, and Global Governance*, 14 GLOBAL GOVERNANCE 73, 75 (2008). See also Daniel C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 YALE L.J. 1490, 1533 (2006).

106. See Hale, *supra* note 105, at 75 (“An institution is transparent if it makes its behavior and motives readily knowable to interested parties. This definition covers both access to information—answering inquiries—and general disclosure—making unsolicited information available.”); see also Jonathan Fox, *The Uncertain Relationship between Transparency and Accountability*, 17 DEV. IN PRAC. 663, 665 (2007) (describing the various “pathways” to transparency).

mix of various mechanisms, the true cost of subsidies is often obscured.¹⁰⁷ In addition, professional sports teams keep their books closed from public scrutiny.¹⁰⁸ Therefore, when teams make claims that their financial situation is untenable without a new, publicly subsidized stadium, it is impossible to validate either the *ex ante* claim of dire financial straits, or the *ex post* evidence that the publicly subsidized stadium is what prevented the team from leaving town.

B. Public Participation

Public participation is “the process through which an organisation enables key stakeholders to play an active role in the decisions and activities which affect them.”¹⁰⁹ Like transparency, public participatory processes can range from passive to active. Passive forms of public participation include providing information or engaging in consultation and dialogue. Active forms of public participation include actions such as co-designing solutions, engaging in co-decision making between actors and stakeholders, and empowering stakeholders to make decisions themselves.¹¹⁰ A particular mechanism that is used to foster public participation can range across these typologies. For instance, a vote by the public can be a plebiscite (this is closer to consultation or discussion) or can be a binding referendum (this is more akin to decision-making, depending on the wording and scope of the referendum). Likewise, a public meeting can simply be informative in nature, or can result in co-designing solutions.

In addition to the “what” of the process, the “who” that participates is likely to vary according to the project. Who might the stakeholders be in regards to publicly subsidized stadiums? Stakeholders are those who may be affected by a party’s decisions.¹¹¹

107. See Haddock, et al., *supra* note 50, at 10.

108. See Brian R. Cheffins, *Playing the Stock Market: ‘Going Public’ and Professional Team Sports*, 24 J. CORP. L. 641, 659 (1998). The Green Bay Packers are the exception to this rule, as their unique structure as a nonprofit organization with shareholders, and annually disclose their financial statements. For more on the Green Bay Packers structure, see Matthew J. Parlow & Anne-Louise Mittal, *Are the Green Bay Packers Socialists?*, 14 VA. SPORTS & ENT. L.J. 165 (2015).

109. See MONICA BLAGESCU, LUCY DE LAS CASAS & ROBERT LLOYD, *PATHWAYS TO ACCOUNTABILITY: A SHORT GUIDE TO THE GAP FRAMEWORK 2* (2005).

110. See Erik Mostert, *The Challenge of Public Participation*, 5 WATER POL’Y 179, 183 (2003) (ranking these forms of public participation from low to high).

111. See Andrew Keay, *Stakeholder Theory in Corporate Law: Has it Got What it Takes?*, 9 RICH. J. GLOBAL L. & BUS. 249, 256 (2010) (explaining stakeholder theory); Leo V. Ryan, *The Evolution of Stakeholder Management: Challenges and Potential Conflicts*, 3 INT’L J. VALUE BASED MGMT. 105, 108 (1990) (using a slightly-narrower

Given the public interest in stadiums, stakeholder groups should be construed broadly.¹¹² Stakeholders generally may include individuals, interest groups, corporations, and various levels of government.¹¹³ In regards to publicly-subsidized stadiums, teams and taxpayers are perhaps the most immediate stakeholder groups. Other stakeholder groups likely include fans of the team the stadium is being built for, residents and business owners in the vicinity of the new stadium, business owners whose business is tied into sports (e.g., sports bars, sports memorabilia stores), and local and other levels of government. These stakeholders may have overlapping membership (e.g., a fan may be a taxpayer). Particular attention should also be paid to stakeholders who do not normally have access to opportunities to participate in decision-making processes.¹¹⁴ These groups may include indigenous groups, the homeless, or the unemployed.

In the past decades, decisions over whether to publicly subsidize stadiums has become less participatory. Municipalities have moved away from referendums. The modern practice is to delegate the issue to elected officials, in a practice known as “no-vote” subsidies.¹¹⁵ Of course, elected officials in a representative democracy are elected to make decisions on behalf of the electorate. However, when the decision is about hundreds of millions of dollars of taxpayers’ money, this type of decision should be submitted to the public.

The current unwillingness by municipalities to allow referendums on stadium subsidies can be seen in the 2017 case *State ex rel. Langhenry v. Britt*.¹¹⁶ The Ohio Constitution mandates that any law, except for certain emergency laws, cannot go into effect for ninety days after passage, allowing time for a referendum to be held.¹¹⁷ The City of Cleveland, which has a similar clause in its City Charter, adopted an ordinance exempting bonds issued to refurbish a bas-

definition of stakeholder as someone who has a legal or moral interest, claim, or right in the undertaking).

112. See Ronald K. Mitchell, Bradley R. Agle & Donna J. Wood, *Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts*, 22 ACAD. MGMT. REV. 853, 857–59 (1997) (discussing the “social responsibility” approach to defining stakeholders for private firms).

113. See Mostert, *supra* note 110, at 180 (describing various classes of stakeholders).

114. See Esty, *supra* note 105, at 1532 (describing historically disenfranchised stakeholders).

115. See Schein, et al., *supra* note 46, at 72; see also Kellison & Mondello, *supra* note 28, at 162.

116. See *State v. Lonero*, 151 Ohio St.3d 277 (Ohio Sup Ct 2017).

117. OHIO. CONST. art. II, § 1, cl. c.

ketball stadium from being taxed. A petition for a referendum was made and was initially rejected by the clerk of Cleveland City Council. Following a discussion on the definition of “emergency laws” and on the authority of the clerk to accept or reject the petition, the Ohio Supreme Court ordered the City of Cleveland to reevaluate the referendum petition. However, shortly after, the request for a referendum was withdrawn, and the Cleveland arena is receiving tens of millions of dollars from the city and the county.¹¹⁸

Even for those who are able to get a referendum on the table, these processes are not a cure-all. Referendums often see pro-stadium groups heavily outspend anti-subsidy/anti-stadium groups.¹¹⁹ Regardless, public participation remains important. If participation is closed off, there is a higher risk that decisions to publicly subsidized stadiums will become a practice driven and managed by the political and business elite, for their benefit.¹²⁰ Increasing the participation of other stakeholders is likely to improve benefits for more groups, i.e., increasing the social benefits generated by the stadium.

C. Social Responsibility

Narrowly defined, “social responsibility” is the “voluntary contribution of finance, goods or services to community or governmental causes.”¹²¹ A broader version of social responsibility is found in the European concept of “solidarity”, which is “expressing responsibility towards internal and external stakeholders. This involves practices relating to contributing to a better society and a cleaner

118. See Sam Allard, *County Preparing to Borrow Even More Money to Pay Cavs for Arena Repairs*, CLEVEscene (May 30, 2019), <https://www.clevescene.com/news/county-preparing-to-borrow-even-more-money-to-pay-cavs-for-arena-repairs-30597243> [<https://perma.cc/8UNC-236T>]; see also Michael Powell, *With James Gone, Cavs Get a Handout*, N.Y. TIMES, Aug. 7, 2018, at B9, available at <https://www.nytimes.com/2018/08/07/sports/lebron-james-cavaliers-arena.html> [<https://perma.cc/6ZEQ-78YZ>].

119. See David M. Paul & Clyde Brown, *The Dynamics of Elite Endorsements in Professional Sports Facility Referendums*, 6 STATE POL. & POL'Y Q. 272, 291–92 (2006).

120. See generally S.L. ELKIN, CITY AND REGIME IN THE AMERICAN REPUBLIC 8 (1987). This issue also arises in planning for sports mega-events. See Graeme Hayes & John Horne, *Sustainable Development, Shock and Awe? London 2012 and Civil Society*, 45 SOCIOLOGY 749, 749 (2011) (“Mega-events planning is, according to Hiller, ‘top-down planning’, conceived by elites, running to fixed completion dates, in which the ‘idea of citizen participation is [. . .] primarily merely responding to a plan conceived by others’, relegated to the role of after-the-fact consultation.”) (citing Harry H. Hiller, *Toward an Urban Sociology of Mega-Events*, 5 RSCH. IN URB. SOCIO. 181, 193 (2000)).

121. See Jeremy Moon, *The Social Responsibility of Business and New Governance*, 37 GOVERNMENT & OPPOSITION 385, 385 (2002).

environment by integrating social and environmental concerns in operations and interactions with stakeholders.”¹²² Publicly subsidized stadiums should “give back” to the local community that often subsidizes the stadium. While sports fans receive an apparent benefit from a new arena for their team, broader public benefits should also accrue from publicly funded projects.

Examples of social responsibility mechanisms include environmental management protocols, assistance programs for the economically disadvantaged, and the inclusion of anti-discrimination policies in hiring.¹²³ Specific examples in the stadium context could include situating arenas on “brownfield” sites, hiring local workers from otherwise vulnerable groups,¹²⁴ or including sporting facilities that benefit local amateur and youth sporting programs.

D. Review

Review is closely interlinked with the broader concept of accountability. Accountability can be said to exist where “some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of those standards, and to impose sanctions if they determine that these responsibilities have not been met.”¹²⁵ Accountability is often defined to include elements such as transparency and public participation. However, I suggest that these elements are conducive to accountability, but are not accountability itself. Instead, I suggest that review, which requires standards, forums, and consequences, is the crux of accountability.

122. See GEERAERT, *supra* note 101, at 39.

123. See ACTION FOR GOOD GOVERNANCE IN INTERNATIONAL SPORTS ORGANISATIONS 220 (2013) (listing various social responsibility mechanisms).

124. See LONDON 2012 BID COMMITTEE, LONDON 2012 CANDIDATE CITY 25 (2004) (providing example of hiring local workers from vulnerable groups as component of London’s 2012 Olympic Bid). Some have stated that the jobs did not materialize. See, e.g., Dan Brown & Stefan Szymanski, *The Employment Effects of London 2012: An Assessment in Mid-2011*, in INTERNATIONAL HANDBOOK ON THE ECONOMICS OF MEGA SPORTING EVENTS 546, 546 (2012) (challenging notion that games would bring jobs); see also Rushanara Ali, *The Olympic Legacy Has Failed to Bring Jobs to London’s East End*, THE GUARDIAN (January 27, 2013), <https://www.theguardian.com/commentisfree/2013/jan/27/olympic-legacy-failed-jobs-london> [<https://perma.cc/E4H3-SB7B>] (also challenging notion games provide jobs). However, others believe there has been some success. See, e.g., Dave Hill, *London Olympics Legacy: Jobs, Jobs and Jobs*, THE GUARDIAN (July 27, 2016), <https://www.theguardian.com/uk-news/davehillblog/2016/jul/27/london-olympics-legacy-jobs-jobs-and-jobs> [<https://perma.cc/C9UT-APY9>] (providing more optimistic view of Olympic game’s ability to generate economic activity and boost employment).

125. See Ruth W. Grant & Robert O. Keohane, *Accountability and Abuses of Power in World Politics* (2005) 99:1 AM. POL. SCI. REV. 29, 29 (2005).

Standards of review for stadiums are likely to begin with the contractual obligations between the parties. However, only the parties to a contract can enforce the contract. This leaves stakeholders, namely the public, unable to enforce contractual promises. Nevertheless, the public can use the contracts as points to pressure parties to adhere to their commitments. Legislation, or commitments made by government, could also serve as standards.

Forums for review can range from the formal to the informal. A highly formal mechanism would be judicial review of contractual obligations. Less formal mechanisms would include things such as internal or external audits. Another forum for review could be the creation of an ombudsperson to act as an ongoing monitor of a stadium project, and a recipient of complaints. Any review forum has benefits and drawbacks in terms of time, expense, accessibility, and scope of review.

In recent years, government auditing bodies have filled the role of review. In 2016, U.S. Bank Stadium, supported by almost \$500 million in public subsidies, opened for play for the NFL's Minnesota Vikings. The stadium was overseen by the Minnesota Sports Facilities Authority, a politically appointed body. The Authority had the use of two luxury suites for marketing purposes. In the fall of 2016, the Minnesota StarTribune reported that members of the Authority often brought family and friends to the luxury suites.¹²⁶ Following an audit by the state legislature,¹²⁷ the chair and one other member of the Authority resigned.¹²⁸ Meanwhile, in 2018, the Manitoba Auditor General examined the province's decision to subsidize Investors Group Field, "[g]iven the significant public interest".¹²⁹ The stadium was built in 2013 to house the Canadian Football League's Winnipeg Blue Bombers. Prior to the review, the

126. See Rochelle Olson, *Work or Perk? U.S. Bank Stadium Executives Have Free Access to Luxury Suite Seats*, MINNESOTA STARTRIBUNE (Nov. 28, 2016), available at <http://www.startribune.com/work-or-perk-u-s-bank-stadium-executives-have-free-access-to-luxury-suite-seats/403153766/> [<https://perma.cc/8W9R-9D8M>] ("The government appointees who oversee U.S. Bank Stadium on behalf of taxpayers get a perk unavailable to most Minnesotans: free tickets to two lower-level luxury suites for all events held there. The suites are for marketing purposes but, they admit, friends and family are often in attendance.").

127. See MINN. OFF. OF THE LEGISLATIVE AUDITOR, MINNESOTA SPORTS FACILITIES AUTHORITY: USE OF SUITES AT THE U.S. BANK STADIUM (Feb. 2017), <https://www.auditor.leg.state.mn.us/sreview/msfa.pdf> [<https://perma.cc/LEE7-FU6P>].

128. See *Uncertain Future for Vikings Stadium After Luxury Suite Scandal*, CBS MINNESOTA (Feb. 18, 2017), <https://minnesota.cbslocal.com/2017/02/18/us-stadium-board-future/> [<https://perma.cc/3JVT-XBG9>].

129. See MAN. AUDITOR GEN., PUBLIC ACCOUNTS AND OTHER FINANCIAL STATEMENT AUDITS 22 (Aug. 2018).

province had written off over \$118 million in loans provided for the stadium. The review may have had little practical effect. Shortly after the review was published, the province wrote off another \$82 million in loans.¹³⁰ These audits were both special audits, and there is little to suggest that state officials are engaging in ongoing review of stadium agreements.

However, a review does not simply need to ensure a lack of wrongdoing. A review process can also ensure that stadiums are living up to social responsibility promises. For example, Seattle's Climate Pledge arena has made various claims to sustainability, including becoming "carbon zero", using zero single-use plastic, engaging in water conservation, and becoming "zero waste".¹³¹ The arena has also established the One Roof Foundation to use the arena to advance equity for the peoples around the arena.¹³² However, it is unclear just how these pledges will be measured and reviewed.¹³³

To be effective, a review process requires consequences. Consequences may be formal, such as a financial reward or penalty, or penal sanctions. Consequences may also be informal, such as public acclaim or shaming. The type of consequence is likely to be determined by the forum used. The more formal the forum, the more formal the consequence is likely to be. A judicial forum is able to impose formal consequences. Meanwhile, an audit or ombudsperson is more likely to generate informal consequences.

The four principles of good governance are ultimately inter-related. Review requires transparency and is enhanced by public participation. Avenues for public participation are enhanced by transparency and increase the likelihood that social responsibility elements will be part of a stadium agreement. The possibility of review makes it more likely that promises of social responsibility will

130. See Larry Kusch, *PCs Say They Will 'Save' Bombers by Writing off Stadium Debt*, WINNIPEG FREE PRESS (Sept. 26, 2018), <https://www.winnipegfreepress.com/local/pcs-say-they-will-save-bombers-by-writing-off-stadium-debt-494434451.html> [<https://perma.cc/V7TB-NJSH>].

131. See Alex Porteshawver, *Seattle and Climate Pledge Arena: A Progressive and Sustainable Arena that Must Integrate Equity and Increase Accountability*, SPORT STADIUMS AND ENVIRONMENTAL JUSTICE 234–35 (2023).

132. See *id.* at 232 ("The Arena recognizes this imperative through the One Roof Foundation. This Foundation works to '[center] diverse voices, experiences, and perspectives in all interactions internal and external to our organization, and leveraging our platforms to advance equity and opportunity in the sports and entertainment industries'").

133. See *id.* at 237–46 (describing potential improvements in accountability for arena project).

be kept. A stadium agreement that benefits the community will at least partially include all four good governance principles.

V. CASE STUDIES: EDMONTON, SACRAMENTO, AND ATLANTA

The three case studies selected are Rogers Place in Edmonton, Alberta, home of the NHL's Edmonton Oilers; Golden 1 Center in Sacramento, California, home of the NBA's Sacramento Kings; and SunTrust Park in Cobb County, Georgia, home of Major League Baseball's ("MLB") Atlanta Braves. Each case study will set out the basics of the stadium subsidy agreement—ownership, costs, and potential benefits for the community. Then, the four principles of good governance will be applied to the negotiation of the stadium deals and to the agreements themselves.

A. Edmonton Oilers

The Edmonton Oilers began play in the World Hockey Association in 1972, playing as the "Alberta Oilers" for their inaugural season. When the Association folded in 1979, the Oilers were one of four teams to join the NHL—and the only team that has not since relocated.¹³⁴ The Oilers moved into the Northlands Coliseum in 1974. Northlands Coliseum was owned by Northlands, a non-profit organization founded in 1879 to provide programs and events around agriculture and community service.¹³⁵ After the Oilers moved to their new arena in September 2016, Northlands struggled, turning the Coliseum over to the City of Edmonton on 1 January 2018,¹³⁶ and the arena is scheduled for demolition in 2025.¹³⁷

In changing arenas, the Oilers moved from northeast Edmonton to downtown Edmonton. The new arena is envisioned as part of a broader downtown property re-development and revital-

134. The Quebec Nordiques moved to Denver, Colorado in 1995; the Winnipeg Jets moved to Phoenix, Arizona in 1996, and the Hartford Whalers moved to Raleigh, North Carolina in 1997.

135. See *About Us*, NORTHLANDS, https://northlands.com/?page_id=138 [<https://perma.cc/F62W-M52J>] (last visited Feb. 3, 2023).

136. See *Northlands Coliseum Will Close Permanently at the End of this Year*, CBC NEWS (Sept. 13, 2017), <http://www.cbc.ca/news/canada/edmonton/northlands-coliseum-city-horse-racing-1.4287527> [<https://perma.cc/MQD6-HS5T>].

137. See Mark Spector, *The End is Nigh for the Building Once Known as Northlands Coliseum*, SPORTSNET (Jan. 31, 2023), <https://www.sportsnet.ca/nhl/article/the-end-is-nigh-for-the-building-once-known-as-northlands-coliseum/> [<https://perma.cc/QR5Y-C2HZ>].

ization project.¹³⁸ The arena's initial project budget was \$480 million,¹³⁹ rising slightly to \$483.5 million.¹⁴⁰ The Oilers were initially asked to contribute \$130 million, or 27%.¹⁴¹ In the end, the team contributed \$132.5 million. The team contributions come from a \$19.7 million cash payment, and \$112.8 million over a 35-year lease.¹⁴²

The City of Edmonton provided \$81 million in direct funding for the arena. The City also established a Community Revitalization Levy ("CRL") to raise \$145 million.¹⁴³ A CRL is a tool available to municipalities under Alberta's *Municipal Government Act*.¹⁴⁴ The municipality initially borrows the money to redevelop an area. As redevelopment takes place, property values in that area should increase, leading to higher property taxes. The municipality then takes these new, additional, property taxes from the area that is subject to the CRL, and uses those taxes to repay the cost of the project.¹⁴⁵ In the case of Edmonton, the CRL is imposed on a downtown district until the \$145 million is paid off, or for twenty years, whichever comes first.¹⁴⁶ Finally, the City of Edmonton has

138. See *City Shaping: The Summary Report of the Leadership Committee for a New Sports/Entertainment Facility for Edmonton*, CITY OF EDMONTON at 3–4 (2008), https://www.edmonton.ca/attractions_events/documents/PDF/City_Shaping_Pdf.pdf [<https://perma.cc/EAH9-56BK>] [hereinafter *City Shaping*] (outlining plans for redevelopment of City of Edmonton).

139. See *Master Agreement Between: The City of Edmonton and Edmonton Arena Corp.*, CITY OF EDMONTON (Aug. 29, 2013), https://www.edmonton.ca/attractions_events/documents/PDF/Arena_Master_Agreement.pdf [<https://perma.cc/EF59-CGHQ>], art 5.1 [hereinafter *Edmonton Master Agreement*].

140. See *The Agreement*, CITY OF EDMONTON, https://www.edmonton.ca/attractions_events/rogers_place/the-agreement.aspx [<https://perma.cc/V33T-XZ5U>] (last visited Feb. 3, 2023) [hereinafter *The Edmonton Agreement*].

141. See Edmonton Master Agreement, *supra* note 139, at art. 5.2.

142. See *The Edmonton Agreement*, *supra* note 140.

143. See *The Edmonton Agreement*, *supra* note 140; see also, *Edmonton Master Agreement*, *supra* note 139, at art. 17.1; see also CITY OF EDMONTON, ALTA. CAN., CITY OF EDMONTON CAPITAL CITY DOWNTOWN COMMUNITY REVITALIZATION LEVY BYLAW 16521 (Sept. 17, 2013).

144. See Province of Alberta Municipal Government Act, R.S.A. 2000, c M-26 s. 381.2 (Can.).

145. See *Community Revitalization Levy Program*, ALBERTA, <https://www.alberta.ca/community-revitalization-levy.aspx> [<https://perma.cc/E9XT-BZTD>] (last visited Feb. 3, 2023). For more on Community Revitalization Levies in Alberta, see Marina Spahlinger & Nancy Wanye, *Community Revitalization Levy as a Municipal Financing Mechanism in Alberta*, 12 SCHOOL OF PUB. POL'Y PUB. SPP RESEARCH PAPER (2019), available at <https://www.policyschool.ca/wp-content/uploads/2019/02/Community-Revitalization-Spahlinger-Wanye.pdf> [<https://perma.cc/K4PM-29QT>].

146. See City of Edmonton Capital City Downtown Community Revitalization Levy Regulation, Alta. Reg. 141/2003, s. 14 (Can.).

imposed a ticket surcharge to raise the final \$125 million.¹⁴⁷ While the city had initially signed a \$17 million sponsorship agreement with the Oilers, they were released from the agreement by early 2017.¹⁴⁸

1. *Transparency*

The negotiations and final agreement for the arena appear to have been completed in a significantly transparent manner. In 2007, when Edmonton began to get serious about a new arena, the city conducted a study to examine the feasibility of the project.¹⁴⁹ Negotiations between the city and the team owners (which changed from the Edmonton Investors Group to Darryl Katz in 2008), while not necessarily open to the public, were reported by the press. City Council voted on the final agreements, in public hearings. The Master Agreement between Edmonton and the Oilers is publicly available on the City of Edmonton website.¹⁵⁰

2. *Public Participation*

To support the feasibility study in 2007, the Mayor of Edmonton formed a “Leadership Committee”.¹⁵¹ The Committee members were largely individuals with connections to either the Oilers or the City of Edmonton. However, working groups created to assist the committee included representatives from the downtown community, such as arts groups; and from the nearby University of Alberta, namely Dan Mason, who has published extensively on sports facilities. The report recommended that once Edmonton had a proposal in place, “community consultation” take place.¹⁵²

Consultation did take place. In 2010, open houses, discussions, stakeholder sessions, and internet and telephone-based surveys were conducted.¹⁵³ Over 90% of respondents wanted assur-

147. See The Edmonton Agreement, *supra* note 140; see also City of Edmonton, by-law 16481, *Downtown Arena Ticket Surcharge Bylaw*, s. 4.1 (bylaw leaves precise amount of the surcharge undefined).

148. See *Northlands Coliseum Will Close Permanently at the End of this Year*, *supra* note 136.

149. See *City Shaping*, *supra* note 138.

150. See *Arena Agreement Documents*, CITY OF EDMONTON, https://www.edmonton.ca/attractions_events/rogers_place/arena-agreement-documents.aspx [<https://perma.cc/4T44-32LN>] (last visited Feb. 3, 2023) (providing access to Arena Agreement Documents signed by City of Edmonton and Edmonton Arena Corporation, owned by Katz Group in 2013).

151. See *City Shaping*, *supra* note 138, at 4.

152. See *id.* at 23.

153. See *City of Edmonton, Arena Consultation—Report* (2011), https://www.edmonton.ca/attractions_events/documents/PDF/Jan17-2011-ArenaConsul

ance that the local community would be consulted going forward. The City Council approved an initial framework agreement at a regular city council meeting on October 26, 2011 by a vote of 10–3.¹⁵⁴ After the initial framework was approved, the public was consulted on the design of the proposed arena.¹⁵⁵ Although the consultation was more about the design of the project, rather than the approval, residents who were against the stadium still found ways to make their views known.¹⁵⁶

The final vote on the agreement took place at a special meeting of City Council on May 15, 2013, in the early afternoon.¹⁵⁷ At the final vote, two speakers from an anti-arena group, “Speak Up Edmonton” were denied a chance to speak by council by a vote of 7–6. The various motions to amend bylaws and approve the agreement, were passed by votes of 10–3.

However, in a book released several years later, a city councillor who was active at the time of the arena approval claimed that the process was undemocratic. In the book *Power Play*, Linda Sloan McCulloch, along with her co-authors, mentioned that many of the city’s meetings in relation to the arena were in-camera, and that so many were in-camera, the Province of Alberta should have intervened.¹⁵⁸ She also states that that City Council was asked to approve the final framework of the agreement between the city and the owner of the Oilers without either the documents or notice that approval was going to be voted upon.¹⁵⁹

Furthermore, the book states that the mayor of Edmonton went to New York City to meet with the owner of the Oilers, and NHL Commissioner Gary Bettman, off the record, and without the

tationReport.pdf [https://perma.cc/ARS5-MHUS]; see also *City of Edmonton, 2010 Consultation Summary* (last visited Feb. 3, 2023) https://www.edmonton.ca/attractions_events/rogers_place/2010-consultation-summary.aspx [https://perma.cc/E52F-F3CL].

154. See Edmonton City Council, *City Council Minutes* (Oct. 26, 2011), https://pub-edmonton.escribemeetings.com/Meeting.aspx?Id=00FE8A73-FAF2-4CF8-8DBB-5526135F8D53&Agenda=PostMinutes [https://perma.cc/SJ3K-92WY] (documenting City Council vote on October 26, 2011).

155. See *City of Edmonton, Designing a New Arena for Edmonton: A Summary of Views from the Public*, CITY OF EDMONTON (2012), https://www.edmonton.ca/attractions_events/documents/PDF/12555COE_ArenaReport_REV14_LowRes.pdf [https://perma.cc/W4TY-5YRR].

156. See *id.* at 33.

157. See Edmonton City Council, *Special City Council Minutes* (May 13, 2013).

158. See JAY SCHERER, DAVID MILLS & LINDA SLOAN MCCULLOCH, *Power Play*, 219–22, 315 (2019).

159. See *id.* at 249 (“Just weeks later, another decision loomed as council was invited to approve—without any notice and without any documentation—the ‘final’ framework negotiated between the city and the Katz Group.”).

mayor's chief of staff, and without city counsellors.¹⁶⁰ However, the administration of the city is not let off the hook, as the authors of the book argue that "the city's administration. . .largely abandoned its traditional remit of providing unbiased analyses of issues to council, instead acting as one of the biggest booters of the arena project."¹⁶¹ Ultimately, the authors find: "In the end, the sheer complexity and secrecy of the deliberations removed ordinary citizens from fully participating in a political debate over the distribution of scarce public resources and the future of their city."¹⁶²

3. *Social Responsibility*

The Master Agreement between the Oilers and the City of Edmonton contains a Community Benefits Agreement.¹⁶³ The Community Benefits Agreement states that the Oilers' ownership will "use their best efforts to encourage job training and employment programs targeted at low-income and high needs residents of downtown Edmonton communities during the construction phase and operations when the Arena is complete."¹⁶⁴ The City of Edmonton agreed to assist by consulting with social service agencies and other groups.

No specific targets for hiring were set. Although over 8,300 persons worked on the arena during the construction phase, it appears only about thirty-nine (0.47%) may have been hired as a result of the Community Benefits Agreement.¹⁶⁵ In the initial phase of operations, about 1,600 were expected to work at the arena upon opening. Of those 1,600, 175 people were hired from inner-city neighbourhoods to work concessions, and it is likely that more were hired to work in other facets of arena operations.¹⁶⁶

The arena project has also spurred the creation various community groups. The most prominent of these groups is the Arena

160. *See id.* at 268–69 ("In early October, the mayor, his chief of staff and strategic advisor Patricia Mitsuka, and city manager Simon Farbrother were summoned to the NHL's head office in New York to hammer out the financial framework behind closed doors. . .").

161. *See id.* at 312.

162. *See id.* at 326.

163. *See Edmonton Master Agreement, supra* note 139, at Schedule D.

164. *See id.*

165. *See* Michelle Bellefontaine, Laura Osman & Mark Harvey, *Edmonton's Rogers Place Community Benefits Don't Stack Up to Projects in Other Cities: Critics*, CBC NEWS (Aug. 29, 2016), <https://www.cbc.ca/news/canada/edmonton/edmonton-s-rogers-place-community-benefits-don-t-stack-up-to-projects-in-other-cities-critics-1.3738014>. [<https://perma.cc/6UR2-NP43>].

166. *See id.*

District Local Advisory Committee, which will be discussed further, below.¹⁶⁷ Other groups have expressed their concern about the effect of gentrification on low-income tenants,¹⁶⁸ the homeless,¹⁶⁹ and particularly the urban Indigenous persons who are also homeless.¹⁷⁰

4. *Review*

The Arena District Local Advisory Committee is the primary review mechanism. The express purpose of the Committee is to identify benefits and negative impacts from the arena, and to advise the city and the Oilers of such impacts.¹⁷¹ The committee is comprised of representatives from 16 social agencies, community sports leagues, business revitalization zones, and labour groups.¹⁷² The committee has recently expanded to include a member from nearby McEwan University.¹⁷³ The group is consultative, as opposed to a decision-making body.

In 2018, the group noted that the Oilers Entertainment Group, which operates Rogers Place, is working with local colleges and community employment services to hire employees.¹⁷⁴ The committee has discussed issues such as public safety, a downtown community arena, and public bathrooms.¹⁷⁵ This is an example of

167. See *Community Advisory Committee*, CITY OF EDMONTON, https://www.edmonton.ca/attractions_events/rogers_place/community-advisory-committee.aspx [https://perma.cc/LEC2-6ZRG] (last visited Feb. 3, 2023).

168. See *Rent Hikes Near New Arena Could Force Out Low-Income Tenants*, CBC (Aug. 8, 2016), <https://www.cbc.ca/news/canada/edmonton/rent-hikes-near-new-arena-could-force-out-low-income-tenants-1.3712610> [https://perma.cc/G2GM-L9F5] (discussing consequences of rent hikes on low-income tenants).

169. See Paige Parsons, *'Time Will Tell': Homeless Adjusting to Life in the Shadow of Rogers Place*, EDMONTON JOURNAL (Jan. 27, 2017), <https://edmontonjournal.com/news/local-news/downtown-homeless-population-still-finding-refuge-in-arenas-shadow> [https://perma.cc/G9WH-XHT5].

170. See Chen Chen and Judy Davidson, *Settler Colonialism as Environmental Injustice Rogers Place and Edmonton*, SPORT STADIUMS AND ENVIRONMENTAL JUSTICE 179–81 (2023).

171. See *Arena District Local Advisory Committee*, CITY OF EDMONTON (Feb. 6, 2017), https://www.edmonton.ca/attractions_events/documents/PDF/CommunityAdvisoryCommitteeTermsOfReference.pdf [https://perma.cc/M6X4-ZR2X].

172. See *Edmonton Master Agreement*, *supra* note 139, at Schedule D.

173. See *Arena District Local Advisory Committee, Minutes 3*, CITY OF EDMONTON (Feb. 4, 2019), https://www.edmonton.ca/attractions_events/documents/meetings/ADLAC-4February2019Minutes.pdf [https://perma.cc/V2UB-TG7G].

174. See *Arena District Local Advisory Committee, Minutes 2*, CITY OF EDMONTON (Sept. 11, 2018), https://www.edmonton.ca/attractions_events/documents/PDF/CommunityAdvisoryCommittee-11Sept2018Minutes.pdf [https://perma.cc/88J4-YVWW].

175. See *id.*

a mechanism that is more informal in nature, as it cannot impose sanctions. It also appears that this is a mechanism that is weakening. While the Committee met 2–4 times per year from 2013–2017, it met only once in 2018, and twice in 2019, and not at all since.¹⁷⁶ To be a stronger review mechanism, the group would likely need to meet more frequently, and to produce public reports or opinions.

B. Sacramento Kings

The Sacramento Kings started out as a semi-professional basketball team, the Rochester Seagrams, in 1923. The team renamed itself the Rochester Royals when it joined the National Basketball League in 1945. In 1948, the Royals joined the Basketball Association of America, which later became the NBA. The Royals won the first NBA championship in 1951. The team moved to Cincinnati in 1957, to Kansas City in 1972—where it eventually re-branded itself as the Kings—before moving to Sacramento in 1984.

When the Kings moved to Sacramento, they initially played in the Sacramento Sports Arena (also known as ARCO Arena). The arena was the smallest in the NBA, seating 10,333 people.¹⁷⁷ The arena is notable for being one of the earliest arenas to sell their naming rights.¹⁷⁸ In 1988, the Kings moved to the new ARCO Arena (not to be confused with the old ARCO Arena). This new arena was built for \$40 million, which may be the lowest cost of any NBA arena built around that time.¹⁷⁹ Despite the new home, the Kings still played in the smallest NBA arena, with a seating capacity of 17,317 people in addition to luxury suites and club seats.¹⁸⁰

176. See *Community Advisory Committee*, *supra* note 167 (providing list of meeting minutes).

177. See Zach Spedden, *Arenas that Live On: Arco Arena*, ARENADIGEST (July 3, 2019), <https://arenadigest.com/2019/07/03/arenas-that-live-on-arco-arena/> [<https://perma.cc/F2Y7-K76J>].

178. See Eva Mariokva Leeds, Micahel A. Leeds & Irina Pistolet, *A Stadium by Any Other Name: The Value of Naming Rights*, 8 J. SPORTS ECON. 581, 588 (2007). A news article states that there may have been an example of naming rights for a municipal stadium before ARCO arena. See *Stadium Naming Rights Market Booming Right Out of the Ballparks*, THE JOURNAL RECORD (Jan. 9, 1998), <https://journalrecord.com/1998/01/09/stadium-namingrights-market-booming-out-of-the-ballparks/> [<https://perma.cc/ED8N-VHXC>] (stating that one of the first naming rights agreements took place in 1973).

179. See Jason Anderson, *Sacramento Kings Announce Arco Arena Demolition*, SACRAMENTO BEE (Mar. 2, 2022), <https://www.sacbee.com/sports/nba/sacramento-kings/article258981188.html> [<https://perma.cc/AGD2-Y396>].

180. See *Sleep Train Arena*, BALLPARKS, <http://basketball.ballparks.com/NBA/SacramentoKings/index.htm> [<https://perma.cc/98UX-JS8E>] (last visited Feb. 3, 2023).

From 2012–2014, whether or not the Sacramento Kings would stay in the city was an open question. In 2012, Sacramento was working on funding for a new stadium known as the “Railyards” project. However, in January 2013, an announcement was made that the Kings were being sold to a Seattle-based ownership group. The group would have bought a majority share of the Kings, and relocated them to Seattle, which had been without an NBA team since the SuperSonics relocated in 2008. However, the NBA Board of Governors voted against allowing the Kings to relocate to Seattle on May 15, 2013.¹⁸¹ Shortly thereafter, the team was sold to a group led by Silicon Valley entrepreneur Vivek Ranadivé for \$534 million.¹⁸² Balmer ended up getting his NBA team in 2014 when he bought the LA Clippers after the disgrace of then-Clippers owner Donald Sterling.

As the uncertainty over who would own the Kings played out, the City of Sacramento was trying to keep the Kings in town by putting together an arena deal. In February 2013, City Council passed a resolution to keep the Kings in Sacramento.¹⁸³ As part of the resolution, City Council reiterated its commitment to build a new arena. Instead of continuing with the Railyards project, the city struck a deal to build the arena on a different site.¹⁸⁴ Time was of the essence, as even after the team was sold to Ranadivé, the NBA Board of Governors reserved the right to relocate the team if a new arena was not built by 2017.¹⁸⁵

181. See Sam Amick, *NBA Owners Vote to Keep Kings in Sacramento*, USA TODAY (May 15, 2013), <https://www.usatoday.com/story/sports/nba/kings/2013/05/15/nba-board-of-governors-sacramento-kings-stay/2162709/> [<https://perma.cc/U4B2-6SHB>] (“As was first reported by USA TODAY Sports, the NBA Board of Governors voted 22-8 in favor of blocking Seattle’s bid to relocate the Kings on Wednesday.”).

182. See Ben Golliver, *Maloofs Complete Sale of Kings to Vivek Ranadive Group at Record Valuation*, SPORTS ILLUSTRATED (May 31, 2013), <https://www.si.com/nba/2013/05/31/sacramento-kings-sold-534-million-vivek-ranadive-george-maloof-joe-maloof-david-stern> [<https://perma.cc/U6PX-C2MV>].

183. See *Support of Keeping the Sacramento Kings in the City of Sacramento and the Pursuit of a New Entertainment and Sports Center in Downtown Sacramento*, Sacramento City Council Resolution No. 2013-0048 (Feb. 19, 2013), https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=3184&meta_id=396118 [<https://perma.cc/8YV3-TM92>].

184. See, e.g., Blair W. Will, *Sacramento Railyards Project Off the Tracks?*, HMS LAW GROUP (Apr. 19, 2013), <https://www.hmslawgroup.com/sacramento-railyards-project-tracks> [<https://perma.cc/EQZ5-TJGX>].

185. See Antonio Gonzalez, *Sacramento Kings Set to Begin ‘New Era’*, FOX SPORTS (Oct. 22, 2013), <https://www.foxsports.com/stories/nba/sacramento-kings-set-to-begin-new-era> [<https://perma.cc/J7DG-MX4Y>].

The new stadium, eventually named Golden 1 Center, had an initial project budget of \$477 million.¹⁸⁶ The initial agreement saw Sacramento contributing about \$223 million, while the team would contribute about \$254 million, plus any cost overruns.¹⁸⁷ At the end of the day, the stadium cost \$558 million.¹⁸⁸ The city capped its contribution at \$255 million, with the team funding the rest.¹⁸⁹ Sacramento issued bonds to cover its contribution.¹⁹⁰ The Sacramento Bee estimates that the bonds will ultimately cost the city \$626 million over the 35-year life of the bonds,¹⁹¹ although the plan is that much of the bond payments would be funded by parking revenues and lease payments from the Kings.¹⁹² As the stadium is owned by the City of Sacramento, the Kings are leasing the stadium for 35 years.¹⁹³ The Kings are paying \$6.5 million per year to lease the stadium on an escalating scale, and will pay \$18 million per year by the end of the lease.¹⁹⁴

Aside from the funding, the city helped the team out in other ways. For example, the agreement between the city and the Kings stated that the Kings would not be subject to new taxes that specifically target the team—although the team would be subject to gen-

186. See *Arena Finance and Funding Agreement between City of Sacramento and Sacramento Downtown Arena LLC*, CITY OF SACRAMENTO (May 20, 2014), http://www.cityofsacramento.org/-/media/Corporate/Files/Arena/052014Documents/8-ExhibitE_AFFA.pdf?la=EN [https://perma.cc/2NHS-RH25], art. 1 [Sacramento Finance and Funding Agreement].

187. See *id.*

188. Right before completion of construction, the figure rose to \$556.6 million. See Dale Kasler, *Cost of Golden 1 Center Jumps by Millions*, SACRAMENTO BEE (Aug. 29, 2016), <https://www.sacbee.com/news/local/city-arena/article98586857.html> [https://perma.cc/K469-SFRZ] (announcing the cost as \$556.6 million). More recent articles use the figure of \$558 million. See Tony Bizjack and Dale Kasler, *Without Parking Fees, Sacramento May Have to Cut Services to Pay Golden 1 Center Debt*, SACRAMENTO BEE (May 21, 2020), <https://www.sacbee.com/news/business/article242848756.html> [https://perma.cc/T6J8-PFKH]; see also Anderson, *supra* note 179.

189. See *id.*

190. See Sacramento Finance and Funding Agreement, *supra* note 186 at art. 2.1.

191. See Dale Kasler and Tony Bizjak, *New Sacramento Arena Relies on City Parking Fees – Plus Lots of Cash from Kings*, SACRAMENTO BEE (Sept. 19, 2016), <https://www.sacbee.com/news/local/city-arena/article102263557.html> [https://perma.cc/QGG2-WW6C].

192. See *id.*

193. See *Arena Management, Operations, and Lease Agreement between City of Sacramento and Sacramento Downtown Arena LLC*, CITY OF SACRAMENTO (May 20, 2014), Exhibit E, http://www.cityofsacramento.org/-/media/Corporate/Files/Arena/052014Documents/6-ExhibitC_AMOLA.pdf?la=EN [https://perma.cc/222J-TP4D] [hereinafter *Arena Management, Operations, and Lease Agreement*].

194. See *id.* at art. 3.1.

erally-applicable taxes.¹⁹⁵ Additionally, the city obtained some of the land that the Kings would use for the stadium through the power of eminent domain, although the Kings paid for the costs of the land.¹⁹⁶

1. *Transparency*

Negotiations for the new arena appear to have started around the time of the resolution by city council.¹⁹⁷ Just one month later, in March 2013, Sacramento city staff recommended that the city partner with the Ranadivé group in financing a new stadium. The stadium would cost \$447 million, with the city contributing \$258 million.¹⁹⁸ It seems as though there may not have been much negotiation over the amount of funding the city would contribute. The funding amount proposed in 2013 was almost the same amount proposed by the city for the abandoned Railyards project in 2012.¹⁹⁹

The contracts between the ownership group and the city were made public on May 1, 2014,²⁰⁰ prior to being voted upon by Sacra-

195. See *Comprehensive Project Agreement for the Sacramento Entertainment and Sports Center between City of Sacramento, Sacramento Basketball Holdings, LLC, Sacramento Downtown Arena, LLC, and Sacramento Kings Limited Partnership*, CITY OF SACRAMENTO (May 20, 2014), http://www.cityofsacramento.org/-/media/Corporate/Files/Arena/052014Documents/4-ExhibitA_Comprehensive.pdf?la=EN [https://perma.cc/3YG3-CUUL], art. 5.1 [hereinafter *Comprehensive Project Agreement*].

196. See Ryan Lillis, *Sacramento Kings Will Pay \$12 Million for Former Macy's Property Under Court Settlement*, THE SACRAMENTO BEE (Feb. 10, 2015) <https://www.sacbee.com/news/local/news-columns-blogs/city-beat/article9711272.html> [https://perma.cc/TP2D-ZEDU].

197. See *Resolution No. 2013-0063: Funding Due Diligence and Negotiation of Preliminary Terms of Potential Development of a Downtown Entertainment and Sports Center*, SACRAMENTO CITY COUNCIL (Feb. 26, 2013), https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=3200&meta_id=396148 [https://perma.cc/ZBC5-LM5L]; see also *Draft Minutes*, SACRAMENTO CITY COUNCIL (Feb. 26, 2013), https://docs.google.com/gview?url=https%3A%2F%2Fsacramento.granicus.com%2FDocumentViewer.php%3Ffile%3Dsacramento_2ea208eed708c78dca86effb1d733a00.pdf%26view%3D1&embedded=true [https://perma.cc/V48A-AUAT].

198. See *Entertainment and Sports Center, City of Sacramento City Council Report No. 2013-00266*, CITY OF SACRAMENTO (Mar. 26, 2013), http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=3233&meta_id=396799 [https://perma.cc/S5SZ-BCYW].

199. See *Entertainment and Sports Center*, *supra* note 198, at 15; see also *Entertainment and Sports Complex, Sacramento City Council Report No. 2012-00231*, at 11, CITY OF SACRAMENTO (Mar. 6, 2012), https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=2923&meta_id=380725 [https://perma.cc/JFL4-X24B].

200. See *Entertainment and Sports Center Project: Terms and Development*, CITY OF SACRAMENTO (updated May 2014), <http://www.cityofsacramento.org/-/media/Corporate/Files/Arena/ESCTermsDev514.pdf?la=EN> [https://perma.cc/9ZVA-ZXVH].

mento City Council on May 20, 2014.²⁰¹ The agreements are still easily accessible on the City of Sacramento’s website.²⁰²

The Comprehensive Project Agreement does note that non-public documents exchanged between the city and the arena group will be treated as confidential. The Agreement further sets out that they may be disclosed under state law, and the rights and responsibilities of the parties in the event of a request for disclosure.²⁰³

2. *Public Participation*

There appears to have been two primary conduits for public participation in the discussions around the arena in Sacramento: the environmental impact report (“EIR”) process, and city council hearings.

The EIR process provided a few avenues for public participation. When the process began, comments from the public were collected during the “Notice of Preparation” from April 12, 2013–May 12, 2013.²⁰⁴ Following the release of the draft EIR report on December 16, 2013, a period of public review lasted from December 16, 2013 until January 31, 2014.²⁰⁵ During this time, a public workshop was held on December 18,²⁰⁶ and a public hearing was held on January 23, 2014.²⁰⁷ It appears that this process generated com-

201. See *Draft Minutes*, SACRAMENTO CITY COUNCIL (May 20, 2014), https://docs.google.com/gview?url=https%3A%2F%2Fsacramento.granicus.com%2FDocumentViewer.php%3Ffile%3Dsacramento_e3dc2dd7bc9a7b7b0a0258e32c72514a.pdf%26view%3D1&embedded=true [https://perma.cc/9AKW-AJ7S].

202. See *Arena: Reports and Resources*, CITY OF SACRAMENTO, <http://www.cityofsacramento.org/Arena/Reports-and-Resources> [https://perma.cc/F2FK-7M8J] (last visited Feb. 3, 2023).

203. See Comprehensive Project Agreement, *supra* note 195, art. 11.21.

204. See *Sacramento Entertainment & Sports Center and Related Development EIR: Final EIR Presentation*, CITY OF SACRAMENTO <https://www.cityofsacramento.org/-/media/Corporate/Files/Arena/Presentations/ESC-FEIR-Presentation-4-10-14.pdf?la=EN> [https://perma.cc/HWC7-BJEF]. For an example of the comments received, see *Entertainment and Sports Center Notice of Preparation Responses (SCH# 2013042031)*, CITY OF SACRAMENTO (June 4, 2013), https://www.cityofsacramento.org/-/media/Corporate/Files/CDD/Planning/Environmental-Impact-Reports/ESC_NOP_Responses_Combined060413.pdf?la=EN [https://perma.cc/3VCE-JWZK] (providing examples of comments from agencies, organizations, and individuals).

205. See *Sacramento Entertainment & Sports Center and Related Development EIR: Final EIR Presentation*, *supra* note 204 (providing details on Draft EIR Public Review).

206. See *City of Sacramento Planning Commission: Sacramento Entertainment and Sports Center and Related Development*, CITY OF SACRAMENTO (Dec. 18, 2013), https://www.cityofsacramento.org/-/media/Corporate/Files/Arena/ESC_EIR_Informational_Workshop_12-18-13.pdf?la=EN [https://perma.cc/K382-JLKW].

207. See *Sacramento Entertainment & Sports Center and Related Development EIR: Final EIR Presentation*, *supra* note 204.

ments from 16 agencies, 20 organizations, and 30 individuals.²⁰⁸ The final environmental impact review was submitted on May 1, 2014, and certified in May 13, 2014.

The other conduit for public participation was through city council meetings. The meetings that addressed arena-related topics appeared to generate public comment. For example, the initial agreement to proceed with the term sheet in March 2013 saw around 30 individuals speak on the topic.²⁰⁹ Meanwhile, on May 14, 2014, the day that city council voted to approve the agreements with the Kings, around 40 individuals spoke to the project.²¹⁰

3. *Social Responsibility*

In the agreements between the City of Sacramento and the Kings' parties, there are three items mentioned that could be considered "social responsibility" items. First, the contractors that are hired to construct the arena were required to pay the prevailing wages, as established by the California Director of Industrial Relations.²¹¹ Second, the arena was required to comply with Sacramento's "Art in Public Places Program", to ensure that there were spaces for public art, and to allow the removal of a gazebo on the proposed stadium construction site that appeared to be related to this program.²¹² Finally, the arena was expected to be LEED Gold certified within one year after the Kings' first season was completed.²¹³ This requirement was met, as the arena was certified LEED Platinum in September 2016.²¹⁴

208. *See id.*

209. *See Draft Minutes*, SACRAMENTO CITY COUNCIL (Mar. 26, 2013), https://docs.google.com/gview?url=https%3A%2F%2Fsacramento.granicus.com%2FDocumentViewer.php%3Ffile%3Dsacramento_3a7b92667580815a35d00c2df44b4bdd.pdf%26view%3D1&embedded=true [<https://perma.cc/7ERA-G47T>] (listing individuals from whom public comments were heard).

210. *See Draft Minutes*, SACRAMENTO CITY COUNCIL (May 20, 2014), https://docs.google.com/gview?url=https%3A%2F%2Fsacramento.granicus.com%2FDocumentViewer.php%3Ffile%3Dsacramento_e3dc2dd7bc9a7b7b0a0258e32c72514a.pdf%26view%3D1&embedded=true [<https://perma.cc/8K75-9H44>] (listing individuals from whom public comments were heard).

211. *See Arena Design and Construction Agreement between City of Sacramento and Sacramento Downtown Arena LLC*, CITY OF SACRAMENTO (May 20, 2014), art. 22.1, http://www.cityofsacramento.org/-/media/Corporate/Files/Arena/052014Documents/5-ExhibitB_ADACA.pdf?la=EN [<https://perma.cc/3DBM-KWG4>] [hereinafter *Design and Construction Agreement*].

212. *See id.* at art. 17.

213. *See id.* at art. 35.

214. *See Sacramento Kings New Arena is First Indoor Sports Venue to Earn LEED Platinum Designation*, GOLDEN1 CENTER (Sept. 22, 2016), <https://www.golden1center.com/news/detail/first-indoor-sports-venue-earn-leed-platinum-designation> [<https://perma.cc/TN88-EQES>].

Outside of the agreements between the city and the Kings, the contractor for the Golden1 Center entered into an agreement with the local unions to put into place a Community Workforce and Training Agreement. This program, known as the ‘Community Workforce Pipeline’, would hire 70 participants from high-need backgrounds and neighborhoods in the construction of the arena. Furthermore, 20% of all construction hours worked was to be worked by apprentices.²¹⁵ The city found that these goals appear to have been met, although documentation was not readily available.²¹⁶ The City of Sacramento has considered this program as a possible model in developing its own community workforce and training agreements.²¹⁷ Also, outside of the agreements, Sacramento has a program where the tickets that it is allocated under the agreements can be distributed to qualifying community groups such as non-profits and schools.²¹⁸

4. *Review*

There is not much in the way of review, other than between the two parties. During the construction phase, the city had the right to review the arena design.²¹⁹ During the operations phase, the city has the right to review some of the team’s financial records connected with the arena.²²⁰ However, these are not general reviews on the public’s behalf, but are solely for the benefit of the city.²²¹

215. See Katie Cracchiolo, *Sacramento Kings Announce ‘Community Workforce Pipeline’ to Promote Job Opportunities at New Arena*, NBA.COM (Apr. 13, 2014), <https://www.nba.com/kings/news/release/042314> [<https://perma.cc/GBP9-H7Q7>].

216. See City Auditor’s Follow-Up Audit of the Golden1 Center Local Hiring and Business Involvement, BUDGET AND AUDIT COMMITTEE, 2017-01564, 6 (Dec. 5, 2017), *available here* <https://www.cityofsacramento.org/-/media/Corporate/Files/Auditor/Audit-Reports/Follow-Up-Audit-of-the-Golden1-Center-Local-Hiring-and-Business-Involvement.pdf?la=EN> [<https://perma.cc/5AYR-8C3E>].

217. See *Establishing Local Hire and Community Workforce Training Program and Local Business Involvement Pilot Project for Citywide Capital Improvement Projects*, City of Sacramento City Council Report No. 2018-01187, CITY OF SACRAMENTO (Aug. 21, 2018), http://sacramento.granicus.com/MetaViewer.php?view_id=22&event_id=3284&meta_id=531962 [<https://perma.cc/YB96-XKLB>].

218. See *City of Sacramento Ticket Policy & Community Group Ticket Program*, CITY OF SACRAMENTO, <https://www.cityofsacramento.org/Clerk/Good-Governance-and-Compliance/Form-802—Ticket-Distribution-Report> [<https://perma.cc/W6DL-A4LJ>].

219. See Design and Construction Agreement, *supra* note 211, art. 23.1.

220. See Arena Management, Operations, and Lease Agreement, *supra* note 119, art. 6.2.

221. See Design and Construction Agreement, *supra* note 211, at art. 34.4.

This view is further supported by language stating there are no third-party beneficiaries to the agreement.²²²

For disputes between the parties, the agreements set out the dispute resolution mechanisms, which are mediation followed by adjudication in a court of competent jurisdiction.²²³ The remedies available to the parties for breach of the agreements include damages and equitable remedies. In the construction phase of the arena, termination was not an available remedy.²²⁴ However, in the operations phase, and when the issue is related to financing, termination may be an available remedy.²²⁵

However, there was one notable legal dispute surrounding the Kings' stadium that is related to review. The dispute was grounded in the *California Environmental Quality Act* ("CEQA").²²⁶ One claim addressed the California legislature's passing of a bill to create an expedited timeline for the environmental impact report for the Sacramento arena. The claim was that this change was unconstitutional, a claim that the California Court of Appeals dismissed.²²⁷ A second claim involving CEQA argued that the City of Sacramento did not comply with the substantive of CEQA, a claim that was also dismissed.²²⁸

C. Atlanta Braves

The Atlanta Braves began play in 1871, in Boston. The team went through various names in its early years, before settling on the "Braves" in 1914. The team left Boston in 1953, moving to Milwau-

222. See, e.g., Comprehensive Project Agreement, *supra* note 195, at art. 11.4; see also Sacramento Finance and Funding Agreement, *supra* note 186, at art. 15.5.

223. See, e.g., Comprehensive Project Agreement, *supra* note 195, at art. 10; see also Sacramento Finance and Funding Agreement, *supra* note 186, at art. 13; see also Design and Construction Agreement, *supra* note 211, at arts. 33, 34.19 (requiring state claims to be brought in California courts in Sacramento County, and federal claims to be brought in US District Court, Eastern District of California, Sacramento courts).

224. See Comprehensive Project Agreement, *supra* note 195, at art. 9; see also Design and Construction Agreement, *supra* note 211, at art. 32.

225. See Sacramento Finance and Funding Agreement, *supra* note 186, at art. 14; see also Arena Management, Operations, and Lease Agreement, *supra* note 193, at art. 11.

226. Cal. Pub. Res. Code § 21050 (Deering, Lexis Advance through the 2023 Extra Session Ch 1, 2023 Regular Session Ch. 2).

227. See *Saltonstall v City of Sacramento*, 231 Cal.App.4th 837 (Cal. Ct. App. 2014), 180 Cal. Rptr. 3d 342.

228. See *Saltonstall v City of Sacramento*, 234 Cal.App.4th 549 (Cal. Ct. App. 2015), 183 Cal. Rptr. 3d 898.

kee and its new, publicly subsidized stadium.²²⁹ The team remained in Milwaukee for just over a decade, moving to Atlanta for the 1966 season. The team played in Atlanta-Fulton County Stadium from 1966–1996, where it won a World Series in 1995. In 1997, the team moved into Turner Field, which was originally constructed as the main stadium for the 1996 Summer Olympic Games, before its conversion into a baseball stadium.²³⁰ In 2017, the Braves began play in SunTrust Park.

The move from Turner Field to SunTrust Park saw the Braves from downtown to Cobb County, a suburban district 16 kilometres outside of downtown northwest of Atlanta. The move outside of the downtown core runs counter to the general trajectory of new baseball stadiums, which have been built closer to the city centre than the older stadiums they have replaced.²³¹

SunTrust Park had an initial project budget of \$622 million, with a cushion for a \$672 million stadium.²³² The initial agreement saw the team paying \$230 million in cash, with a discretionary budget of another \$50 million. On the public side, Cobb County would issue \$368 million in bonds and provide \$14 million in in-kind transportation improvements, while the community of Cumberland, Georgia, contributed \$10 million.²³³ In the murky world of stadium finance economics, the County now claims that it has only contributed \$300 million, with the Braves contributing \$372

229. For further discussion regarding the Atlanta Braves decision to leave Boston and move to Milwaukee see *infra* notes 14–63.

230. Since the move, the stadium was again refurbished as a football stadium for Georgia State University. See Josh Green, *25 Years Later, Where Atlanta's Olympic Venues Stand (Or Don't)*, URBANIZE (July 30, 2021), <https://atlanta.urbanize.city/post/25-years-later-where-atlantas-olympic-venues-stand-or-dont> [<https://perma.cc/DB3S-5NFQ>].

231. An informal study showed that, of the nineteen new MLB stadiums built from 1960–2017, only two (Kansas City in 1973, and Atlanta in 2017) led to a significant move outside of the downtown core. Four other stadiums saw a minimal move away from the downtown core (i.e., less than a kilometer), two saw minimal moves towards the downtown core, and the remaining eleven saw significant moves towards the downtown core. See Reuben Fischer-Baum, *Chart: How the Braves' Atlanta Exodus Compares with Other MLB Moves*, DEADSPIN (Nov. 11, 2013), <https://deadspin.com/chart-how-the-braves-atlanta-exodus-compares-to-other-1462494338> [<https://perma.cc/A9XL-REK8>].

232. Development Agreement Among Cobb County, Georgia; Cobb-Marietta Coliseum and Exhibit Hall Authority and Atlanta National League Baseball Club, Inc.; Bred Co., LLC; Braves Stadium Company, LLC; Braves Construction Company, LLC, Dated May 27, 2014, Art. 6.1.1, Exhibit C [Cobb County Development Agreement], available at: <https://s3.us-west-2.amazonaws.com/cobbcounty.org-if-us-west-2/prod/2018-07/Cobb-Braves-Executed-Development-Agreement.pdf> [<https://perma.cc/7Y EZ-3E28>].

233. See *id.*

million,²³⁴ apparently in part due to the Braves covering more of the bond costs.²³⁵ Yet, even the parties themselves could not keep track of costs, as revealed by a short-lived dispute over the payment of the transportation improvements.²³⁶ However, this article is not about analyzing the particular financial aspects of the stadium, but about governance.

The new stadium itself is owned by the Cobb-Marietta Coliseum and Exhibit Hall Authority²³⁷—a public authority under the laws of Georgia, created in 1980.²³⁸ The Braves will rent the stadium for 30 years, for \$6.1 million per year through a pair of “licence fees”.²³⁹ If the bonds issued by the County to finance the stadium are paid off, then the rent is reduced to \$3 million per year through elimination of one of the licence fees.²⁴⁰ The Braves, through the Braves Stadium Company, keep all revenues generated by the stadium, including parking, sales of suites, concessions, sponsorship,²⁴¹ and naming rights,²⁴² with some exceptions for up to three county-run events per year.²⁴³ Both the Cobb-Marietta Authority and the Braves contribute an equal sum to a Capital Mainte-

234. See *Braves Stadium Information*, COBB COUNTY, <https://www.cobbcounty.org/communications/info-center/braves-stadium-information> [<https://perma.cc/758L-3DK5>] (last visited Feb. 3, 2023).

235. See Jon Gargis, *The Braves New Stadium: A Financial Check 4 Months into the Season*, NEWNAN TIMES-HERALD (Aug. 22, 2017), <http://times-herald.com/news/2017/08/the-braves-new-stadium-a-financial-check-4-months-into-the-season> [<https://perma.cc/JF9V-E7HG>].

236. See Dan Klepal & Meris Lutz, *Braves, Cobb Spar Over Transportation Projects at SunTrust Park*, ATLANTA JOURNAL-CONSTITUTION (Jan. 23, 2017), <https://www.ajc.com/news/local-govt-politics/braves-cobb-spar-over-transportation-projects-suntrust-park/fzOpzDHPcFPvrEPUxYAWiK/> [<https://perma.cc/D7GS-E3G6>].

237. See Cobb County Development Agreement, *supra* note 232, at Art. 6.8.1(a).

238. See *Cobb-Marietta Coliseum and Exhibit Hall Authority Created*, L No 1222, [2] Local and Special Acts and Resolutions of the General Assembly of the State of Georgia 4091 (1980).

239. See Stadium Operating Agreement by and Among Braves Stadium Company, LLC; Cobb-Marietta Coliseum and Exhibit Hall Authority; Cobb County, Georgia, Dated May 27, 2014, Art. 3.1 [Cobb County Operating Agreement], available at <https://s3.amazonaws.com/cobbcounty.org/if-us-east-1/s3fs-public/2018-07/Cobb-Braves-Resolution-Stadium-Operating-Agreement.pdf> [<https://perma.cc/5LSD-YQV7>].

240. See *id.* at arts. 9.1, 9.2.

241. See *id.* at art. 6.1.

242. See *id.* at art. 10.1. The naming rights for SunTrust Park have been reported to be more than \$10 million per year for 25 years. Tim Tucker, *Braves Name Their New Stadium: SunTrust Park*, ATLANTA JOURNAL CONSTITUTION (Apr. 4, 2017), <https://www.ajc.com/sports/baseball/braves-name-their-new-stadium-suntrust-park/1Mvo9RDzuulxLfECAtU71L/> [<https://perma.cc/5G9V-48G7>].

243. See Cobb County Operating Agreement, *supra* note 239, at art. 11.1.

nance Fund to be used to maintain the stadium.²⁴⁴ The County is prohibited from imposing a ticket tax.²⁴⁵

The vice-president for economic development at the Cobb County Chamber of Commerce estimated that the stadium and surrounding development would generate 3,400 jobs in Cobb County, and \$13.5 million per year in “payroll benefits”.²⁴⁶ The stadium itself is not taxed, as it is owned by the Authority, but the land around the stadium is being developed, and expected to generate millions of dollars of property taxes, with the overall development of the stadium and surrounding area expected to generate 25,000 jobs.²⁴⁷

1. *Transparency*

The agreement between the Braves and Cobb County caught the public by surprise when it was announced on November 12, 2013. The Braves were coming to the end of their 20-year lease at Turner Field, so a new stadium was not completely unexpected. While the MLB was apprised of the negotiations, the team made the decision to keep the public in the dark.²⁴⁸ Atlanta Braves President John Schuerholz was adamant that the agreement for Cobb County to subsidize a new stadium had to be negotiated in secret to avoid critical discussion of the agreement: “If it had leaked out, this deal would not have gotten done.. . .If it had gotten out, more people would have started taking the position of, ‘We don’t want that to happen. We want to see how viable was this going to be’.”²⁴⁹

The subsequent documentation, namely the contracts, were made available through the Cobb County website, through a dedicated portal of “Braves Agreements”, although it is uncertain when

244. See *id.* at arts. 8.1.1, 8.1.2, 8.1.3.

245. See *id.* at art. 18.1.2.

246. See Doug Walker, *Atlanta Braves 2017 Move to Cobb County Raises Questions*, ROME NEWS-TRIBUNE (Nov. 12, 2013), http://www.northwestgeorgianews.com/rome/news/local/atlanta-braves-move-to-cobb-county-raises-questions/article_4f02d68a-4b63-11e3-8b51-0019bb30f31a.html [<https://perma.cc/XU2Z-5WAA>].

247. See Gargis, *supra* note, 235.

248. See Mark Bowman, *Braves Leaving Turner Field for Cobb County*, MLB.COM (Nov. 11, 2013), <https://www.mlb.com/news/atlanta-braves-leaving-turner-field-for-new-ballpark-in-nearby-cobb-county/c-63830416> [<https://perma.cc/DYK9-3NCM>] (“Commissioner Allan H. (Bud) Selig issued the following statement regarding today’s announcement: “The Braves have kept us apprised of their stadium situation through this process.”).

249. See Matthew Pearl & WXIA, *Braves President: Cobb Deal had to be Kept Under Wraps*, 11ALIVE.COM (May 22, 2014), <https://www.11alive.com/article/sports/mlb/atlanta-braves/braves-president-cobb-deal-had-to-be-kept-under-wraps/85-253151902> [<https://perma.cc/R5NR-Q3T6>].

in the process they were made available.²⁵⁰ While the Braves' stadium deal was not transparent in its negotiation, it was transparent after-the-fact. This outcome is of no comfort to those who require transparency to debate policy alternatives. This lack of transparency plays out in other governance elements when applied to the Cobb County stadium, namely participation.

2. *Public Participation*

When it comes to public participation, the Cobb County Board of Commissioners was the main conduit for the public to make their views known. While residents of Cobb County addressed the Board of Commissioners throughout the process of finalizing the agreement,²⁵¹ the two most prominent occasions for public participation were the Commission meetings held before the signing of the Memorandum of Understanding between Cobb County and the Braves, and before the signing of the Development Agreement, which provided for the bond issue.

Participation was restricted at both meetings. Normally, twelve people are able to speak on an issue before the Commission. At the hearing discussing the Memorandum of Understanding, the Chairman of the Board of Commissioners allowed twenty people to speak on the issue, "due to the public interest".²⁵² At the hearing discussing the Development Agreement, the public comments were limited to the customary twelve. At that meeting, all twelve spoke "in support of the Braves' move to Cobb County".²⁵³ The media reported that the twelve speaking slots, which could only be signed up for five minutes before the meeting, were taken up by those who lined up for hours before the meeting, and speakers who requested more slots were "escorted from the room".²⁵⁴ Supporters of the stadium argued that they simply cared more about the issue, and were even willing to leave work to support the stadium at the meeting,

250. See *Braves Stadium Information*, *supra* note 234 (under "Braves Agreements").

251. See, e.g., *Cobb County, Board of Commissioners: Minutes of Regular Meeting*, COBB COUNTY (Dec. 12, 2013) at 52; see also *Cobb County, Board of Commissioners: Minutes of Regular Meeting*, COBB COUNTY (Mar. 25, 2014) at 128 (providing list of residents addressing board).

252. See *Cobb County, Board of Commissioners: Minutes of Regular Meeting*, COBB COUNTY (Nov. 26, 2013) at 184.

253. See *Cobb County, Board of Commissioners: Minutes of Regular Meeting*, COBB COUNTY (May 27, 2014) at 2.

254. See Dan Klepal, *Cobb Approves Major Braves Stadium Agreements*, ATLANTA JOURNAL-CONSTITUTION (May 27, 2014), <http://www.myajc.com/news/cobb-approves-major-braves-stadium-agreements/VlgOPijPkz6hyKurCvZ9dL/#c4182e7d.3533006.73538> [https://perma.cc/8UN3-KQJR].

standing in line to get the speaking slots.²⁵⁵ Notably, the agenda for the meeting was released on the Friday evening before a long weekend, with the meeting to take place on Tuesday.²⁵⁶ The Commission unanimously approved the issuance of the bonds, except for one sub-measure, which passed 4–1.²⁵⁷ The Commission Chairman defended these proceedings by stating that its rules were followed “in the best interest” of those in attendance.²⁵⁸

3. *Social Responsibility*

Both the Development and Operation Agreements require non-discrimination on the grounds of race, colour, creed, national origin, gender, age, or disability in accordance with federal legislation in regards to both hiring by the Braves, but also for their sub-contractors.²⁵⁹ However, there are no other social responsibility mechanisms in the agreements, such as a commitment to hire locals, or remediate the environment.

4. *Review*

When it comes to review of either the construction of the stadium, or the operation of the stadium, review is only available to the parties to the agreements. The agreements make clear that there are no third-party beneficiaries, such as the broader public.²⁶⁰ While both parties had a right to audit expenditures during the

255. *See id.* (“Another critic, Rich Pellegrino, said the process was stacked against people who couldn’t leave work early and spend hours in line waiting to speak. Pellegrino, with the group Citizens for Governmental Transparency, said he arrived at about an hour before the meeting but it was too late to get on the list to speak.”).

256. *See* Barry Petchesky, *Opponents Barred from Speaking as Cobb County Approves Braves Stadium*, DEADSPIN (May 5, 2014), <https://deadspin.com/opponents-barred-from-speaking-as-cobb-county-approves-1582556255> [perma.cc/2JH4-TEPN]. The file folder that the agenda is housed in was created on May 23, 2014, at 10:26am, which appears to corroborate this claim. *See Agendas: BOC Regular Meetings Agendas: 2014: 140527 May 27, 2014*, COBB COUNTY (MAY 27, 2014), <http://160.73.50.75/countyclerk/browse.aspx?dbid=0> [https://perma.cc/T45T-HWDH] (click “00 BOC Regular Meeting Agendas”, click “2014”, click “140527 May 2017, 2014”).

257. *See* Klepal, *supra* note 254 (“All of the agreements were approved unanimously, except for bond documents which allow the county to borrow up to \$397 million for the project. Those documents were not made available to the public until Friday evening, after 6 p.m. Commissioner Lisa Cupid voted against the bonds resolution, she said, because of the timing of that release.”).

258. *See id.*

259. *See* Cobb County Development Agreement, *supra* note 232, at art. 12.22; *see also* Cobb County Operating Agreement, *supra* note 239, at art. 27.21

260. *See* Cobb County Development Agreement, *supra* note 232, at art. 12.17; *see also* Cobb County Operating Agreement, *supra* note 239, at art. 27.17.

development phase,²⁶¹ there does not appear to be a similar right during operations. Any formal review of the agreements is simply the dispute-resolution mechanisms between the parties, which in this case involves mediation, followed by litigation in the Superior Court of Cobb County, Georgia.²⁶² The remedies provided for in the agreements include damages and equitable relief during construction,²⁶³ and termination of the agreement during the operation of the stadium.²⁶⁴ As such, unless one party is determined to hold another party accountable, possibly through public litigation, review of the agreement is limited to private contractual enforcement.

The initial decision to provide the subsidies for the stadium was reviewed by the by the Supreme Court of Georgia in 2015.²⁶⁵ The state's highest court heard arguments *inter alia* that the initial bond issue violated the Georgia Constitution (namely its debt, gratuities, and lending clauses), and Georgia bond laws. In short, the Court found that although "aspects of the deal structure may push the law about as far as it can go, it does not cross the line into illegality."²⁶⁶ The stadium was found to benefit a public purpose, even if that public purpose was delivered by a private entity (the Braves).²⁶⁷ In its conclusion, the Court noted:

[W]e do not discount the concerns Appellants have raised about the wisdom of the stadium project and the commitments Cobb County has made to entice the Braves to move there. But those concerns lie predominantly in the realm of public policy entrusted to the County's elected officials. . . If the stadium deal does not fulfill the high expectations that have been set for it, there may be a significant political price to pay for those who negotiated and signed onto it.²⁶⁸

261. See Cobb County Development Agreement, *supra* note 232, at art. 6.2.

262. See *id.* at arts. 10.8.2, 10.8.4; see also Cobb County Operating Agreement, *supra* note 239, at arts. 16.1.2, 16.1.4.

263. See Cobb County Development Agreement, *supra* note 232, at art. 10.5.

264. See Cobb County Operating Agreement, *supra* note 239, at art. 3.2.4.

265. See *Savage v State*, 297 Ga. 627, 774 S.E.2d 624 (Ga. 2015) (holding that Exhibit Hall Authority is empowered to issue revenue bonds to pay costs of acquisition, construction, reconstruction, improvement, addition to, or extension of recreation centers and areas including athletic facilities).

266. See *id.* at 641.

267. See *id.* at 634.

268. See *id.* at 641.

Another instance of external review involved a short-lived allegation of ethics violations against Cobb County Chairman, Tim Lee. The allegations were that Lee violated Georgia's open records laws by using a private e-mail account, and hiring an outside attorney to negotiate the stadium deal.²⁶⁹ The Cobb County board of ethics refused to hear the allegations, and the charges were eventually dropped.²⁷⁰

Although there is no avenue for review of the agreement by an external authority, the ultimate democratic review mechanism, holding legislators to account for their decisions through the ballot box, was used by residents of Cobb County. Cobb County Chairman, Tim Lee, was voted out of office in mid-2016, in an election that was seen as a "litmus test" for the Braves stadium deal.²⁷¹ Lee's challenger, Mike Boyce, stated that "it's never been about the Braves. They are a business and they did what they had to do for their shareholders. The issue was transparent and open government and transparency, and this was never brought to the people in a way that reflected that."²⁷²

VI. ANALYSIS: RE-SHAPING THE STADIUM DEBATE

This study examined three publicly subsidized stadiums. In all cases, the public authorities subsidized very similar amounts, at 45–47% of the cost of the stadium. In Sacramento and Cobb County, the team put in just over 50% of the money for the stadium, while in Edmonton, the remaining funding was split between the team (27%) and the ticket-buying public (26%).

269. See Dan Klepal, *Ethics Charges Against Lee Dropped*, ATLANTA JOURNAL-CONSTITUTION (Nov. 20, 2014), <https://www.ajc.com/news/local-govt—politics/ethics-charges-against-lee-dropped/WEQQj0ukeImphywS1MT1GK/> [https://perma.cc/QKA9-XBCJ].

270. See *Complaint Against Lee Dropped by Ethics Panel*, MARIETTA DAILY JOURNAL (June 18, 2014), https://www.mdjonline.com/news/complaint-against-lee-dropped-by-ethics-panel/article_927505df-78c7-5e3c-8be8-6ccafd0319ed.html [https://perma.cc/FK59-SQG7].

271. See Meris Lutz, *Cobb County Voters Send Lee Packing; Boyce Elected New Chairman*, ATLANTA JOURNAL-CONSTITUTION (July 27, 2016), <https://www.ajc.com/news/local-govt—politics/cobb-county-voters-send-lee-packing-boyce-elected-new-chairman/amm2QpAS9oVjtaozOwvFXP/> [https://perma.cc/649J-UQWV].

272. See Ross Cavitt, *Mike Boyce Defeats Incumbent Tim Lee for Cobb Commission Chair*, WSB-TV (July 27, 2016), <https://www.wsbtv.com/news/local/cobb-county/cobb-commission-chairman-tim-lee-concedes-runoff-election/412244624> [https://perma.cc/9WYH-E2KT].

TABLE 1—STADIUM SUBSIDIZATION COMPARISON
(IN MILLIONS OF DOLLARS)²⁷³

	Team Contribution	Public Authority Contribution	Ticket Tax	Total Cost
Edmonton	C\$132.5 (27%)	C\$226 (47%)	C\$125 (26%)	C\$483.5
Sacramento	US\$303 (54%)	US\$255 (46%)	_____	US\$558
Cobb County	US\$372 (55%)	US\$300 (45%)	_____	US\$672

As stated before, this Article is not about the economics of stadium financing, but about the process. Yet, that the three case studies yield similar financial outcomes makes the comparison of the cases even stronger.

As stated in the introduction to this Article, three research questions were posed: 1) can principles of good governance be applied to agreements to publicly subsidize stadiums?; 2) are cities accountable to the public when it comes to stadium financing?; and, 3) how might principles of good governance improve the process and substance of agreements to publicly subsidize stadiums to the benefit of the public? This part will address the first research question, before addressing questions two and three together. This part will then discuss what this research means for those engaged in the stadium debate, from both an academic and a practical perspective.

A. Good Governance Principles can be Applied to Stadiums

Principles of good governance can be applied to examining publicly subsidized stadiums, as shown by their application to the case studies in this article. What the principles of good governance do, as shown by this study, is move the stadium subsidy debate beyond the simple “for/against” dichotomy, and even beyond the more complex, but largely settled “cost/benefit” debate. Given that public subsidies for stadiums are unlikely to stop any time soon, it is important to move beyond the current debates, and to provide tools for legislators and citizens to hopefully make the best of what may be a bad deal, economically.

273. Figures are presented in local currency. The value is in the percentage comparison, so a conversion of American to Canadian dollars, or vice-versa, is not done.

There are shortcomings to applying the principles of good governance to stadium subsidies. First, it can be difficult to tell whether or not improvements in good governance would lead to demonstrably better outcomes for citizens.²⁷⁴ There is an open question as to what a “better” outcome consists of: is it an improved process?²⁷⁵ Increased social benefits? Lower stadium subsidy amounts? Measuring this is complicated by the fact that although stadium subsidies are regular, they are not numerous. In addition, any particular stadium subsidy situation cannot really be re-run as a “good governance” versus “bad governance” counterfactual.

Additionally, there is simply imperfect knowledge of what is happening when it comes to stadium subsidy negotiations. This affects the analysis of transparency in particular and is especially true years after the stadium has been built, as the die is cast, politicians have left office, and so forth. The book *Power Play*, discussed above, reveals that what may appear to be a transparent process on its face may in fact not be so. It is difficult to discern what is not being kept from the public, or in other words, what the “unknown unknowns” are.²⁷⁶

B. The Public Should Expect More Accountability for Stadiums

In assessing the case studies, there is much work to be done by municipalities—and likely other levels of government—when subsidizing stadiums. If principles of good governance are not applied, there is unlikely to be accountability to the citizens. But before engaging in a broader discussion, we should first assess how the case studies fared.

274. See e.g., Milena M. Parent, Russel Hoye, Marijke Taks, Michael L. Naraine, and Benoît Seguin, *Good Sport Governance and Design Archetype: One Size Doesn't Fit All*, in GOOD GOVERNANCE IN SPORT: CRITICAL REFLECTIONS 180, 184 (2022) (demonstrating assumption that improved indicators of good governance leads to better outcomes is “unsupported assumption”).

275. Frank van Eekeren raises that there could be two approaches to good governance: 1) that good governance improves public outcomes, 2) that good governance is a good in itself. See Frank van Eekeren, *The Value of a Public Value Perspective on Good Governance in Sport*, in GOOD GOVERNANCE IN SPORT: CRITICAL REFLECTIONS 42, 46 (2022).

276. This is a line from a quote from former US Secretary of Defense Donald Rumsfeld, who famously stated: “As we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don't know we don't know.” See David A. Graham, *Rumsfeld's Knowns and Unknowns: The Intellectual History of a Quip*, THE ATLANTIC (Mar. 28, 2014), <https://www.theatlantic.com/politics/archive/2014/03/rumsfelds-knowns-and-unknowns-the-intellectual-history-of-a-quip/359719/> [https://perma.cc/D7Q8-7XEV].

Regarding transparency, Sacramento's and Edmonton's processes appear to be more transparent than Cobb County's process. In Edmonton, city council kept the public informed about ongoing negotiations, although at least one counsellor found the number of *in camera* meetings concerning. While Sacramento's negotiations were briefer, they built off a prior project, and the motion to begin the negotiations with the Ranadivé group were publicly voted upon. However, in Cobb County, the initial agreement was presented as a *fait accompli*, where the team, county, and league knew of the agreement, but the public was kept in the dark. As a strength, in all three cases, the stadium agreements were easily accessible online.

A similar comparison emerges for public participation. Edmonton and Sacramento appeared to engage in more public participation than Cobb County. In Edmonton, the public was brought into the conversation about the arena at two distinct times, while Sacramento had public input during the EIR phase and during city council meetings. However, it seems that Sacramento's public consultation may have been a bit broader. Edmonton's public consultation was more on the "passive" end of the spectrum of public participation options, and Edmonton's city council limited speaking opportunities during votes. Meanwhile, Cobb County engaged in little public participation throughout the process, and even stifled public participation on the eve of the final vote of the Board of Commissioners, limiting speakers to only twelve. Although the Commission Chairman invoked the "public interest" in limiting speakers, I suggest it is more in the public interest to allow more speakers when discussing almost \$400 million in subsidies. At no point did any of the three case studies carry out a plebiscite or referendum.

In terms of social responsibility, the Edmonton agreement is the most progressive of the case studies. The Edmonton agreement included a Community Benefits Agreement as an appendix and set out the creation of a committee to address community issues related to the arena. However, the agreement does lack specific, measurable outcomes, and some groups have felt that the agreement has not gone far enough in setting out benefits to Edmontonians. In Sacramento's case, the agreement largely only addressed environmental issues, while social responsibility issues around employment were left to other parties, such as contractors. Meanwhile, the Cobb County agreement simply acknowledges that federal law will be followed regarding hiring, which is setting out a bare minimum.

Finally, when it comes to review, none of the stadium agreements are subject to formal, ongoing review. Edmonton has an ongoing review mechanism through the Arena District Local Advisory Committee. However, the authority of the committee is limited as it meets infrequently and has only advisory powers. Sacramento carried out a review of the hiring policies for the stadium, but that was a one-off review. In Sacramento's case, the city is allowed to audit the team in relation to particular issues. The Cobb County stadium allowed for an audit by either party during construction, but not during operations. No case seems to allow the review of the team's finances.

Overall, the Edmonton and Sacramento arenas performed more strongly in all four areas of good governance than the Cobb County stadium. I suggest that Sacramento was stronger than Edmonton when it came to transparency and public participation, while Edmonton was stronger than Sacramento when it came to social responsibility and review.

Do good governance principles make a difference in the economics of the deal? Perhaps not. However, good governance does seem to make a difference in terms of public opinion. SunTrust Park has become notorious as an example of all that is wrong with publicly subsidized stadiums both before,²⁷⁷ and after,²⁷⁸ construc-

277. See e.g., Eric Levenson, *The New Braves Stadium Is a 'Really Crappy Deal' for Cobb County*, THE ATLANTIC (Nov. 11, 2013), <https://www.theatlantic.com/entertainment/archive/2013/11/atlanta-braves-new-stadium-terrible-deal-cobb-county/355126/> [<https://perma.cc/CNV4-8V83>] (quoting Neil deMause on the 'crappy deal'); see also Neil deMause, *Cobb County and the Braves: Worst Sports Stadium Deal Ever?*, VICE SPORTS (June 9, 2016), https://sports.vice.com/en_us/article/qkyk3v/cobb-county-and-the-braves-worst-sports-stadium-deal-ever [<https://perma.cc/9DGN-Z9AG>] ("It's an all-around train wreck of the highest order, and raises the inevitable question: Could the Braves stadium deal possibly qualify as the worst ever agreed to by any public body?").

278. See e.g., T.M. Brown, *The Braves' New Ballpark is an Urban Planner's Nightmare*, DEADSPIN (Aug. 10, 2017), <https://deadspin.com/the-braves-new-ballpark-is-an-urban-planners-nightmare-1797593063> [<https://perma.cc/Y3J6-BWTL>] ("A Cobb County local I spoke with on the condition of anonymity as her family is involved in local politics said 'there's very little good that could be said about the stadium for the Cobb County taxpayers' . . ."); see also Eric Boehm, *Atlanta Braves' New Stadium Is a Disaster for Taxpayers and Fans*, REASON (Apr. 15, 2017), <https://reason.com/blog/2017/04/15/atlanta-braves-new-stadium-is-a-disaster> [<https://perma.cc/K29T-Q59N>] ("As bad as the stadium deal has been for taxpayers, there's at least a silver lining. The backroom negotiations, ethics questions, and obvious lack of economic benefit for anyone or anything in Cobb County has laid bare the false claims made by teams, owners, and leagues in favor of new publicly funded stadiums."); see also Meris Lutz, *Braves Stadium Hardly a Home Run for Taxpayers*, ATLANTA JOURNAL-CONSTITUTION (Dec. 26, 2017), <https://www.myajc.com/news/local-govt-politics/braves-stadium-hardly-home-run-for-cobb-taxpayers/w1PyNelP69O82jY34YyOQJ/> [<https://perma.cc/EF45-4X8T>] ("Although it accounts for only a fraction of the county's budget, the ballpark has

tion. In comparison, Rogers Place received a more balanced reception,²⁷⁹ with one city Councillor who voted against the initial agreement stating that while he did not agree with the particular deal, it “has been a benefit to the city”.²⁸⁰ And as stated above, another city counsellor contributed to a book that was strongly against the process. This is not to say that Rogers Place or Golden 1 Center are “poster children” of good stadium governance. Many of the measures taken were small steps, at the lower end of what is possible for good governance practices.

The public should expect public authorities to be more accountable for spending millions of taxpayer dollars on publicly subsidized stadiums than they are. The types of subsidies, from using taxpayer dollars to expropriation of land, affect the public. Beyond the general public, other groups of stakeholders exist. These groups have varied interests and are impacted by stadiums in different ways. Particular attention should also be paid to historically marginalized groups.

Unfortunately, the public is not getting accountability. Given how principles of good governance are reliant on each other to function optimally, a shortfall on any principle of good governance ultimately weakens accountability. As demonstrated by the case study, transparency exists to a reasonable degree, as stadium agreements are often published. However, other elements of good governance are frequently lacking. Stadiums are more frequently being granted “no-vote” subsidies, where city council, not residents, decide the fate of stadium subsidies. This was the case in all three cases. Furthermore, the cases of Edmonton and Cobb Country showed instances where councils were willing to curtail the ability of

become a potent symbol for many of irresponsible spending and skewed priorities.”).

279. See David Staples et al., *The Rogers Place Story: The Dream, the Debate and the Deals that Built the Arena*, EDMONTON JOURNAL (Sept. 26, 2016), <https://edmontonjournal.com/news/local-news/rogers-place-an-arena-built-on-doubt-debate-and-dreams> [<https://perma.cc/R9J5-WEM3>] (“Some look at the arena project and see doom, stagnation and the incompetence and naivete of our local politicians. Others see prosperity, growth and a coldly calculated but visionary bet on the future of our downtown.”); see also Mimi Williams, *The Arena is Open for Business, but the City Deal that Got it Built is Still Under Fire*, VUEWEEKLY (Sept. 14, 2016), <http://www.vueweekly.com/the-arena-is-open-for-business-but-the-city-deal-that-got-it-built-is-still-under-fire> [<https://perma.cc/H8ZD-V82Y>] (taking more critical look at deal in regards to social responsibility and review).

280. See *Same Old Song and Dance: Edmonton Councilor Who Voted Against Arena Deal Says Calgary Script a Familiar One*, CBC (Sept. 18, 2017), <https://www.cbc.ca/news/canada/calgary/calgary-arena-nenshi-ken-king-tony-caterina-rogers-place-saddledome-1.4294593> [<https://perma.cc/JS4K-B69W>].

residents to speak on stadium-related issues—although this practice was far more drastic for Cobb County than Edmonton.

Mechanisms of review are also lacking. When jobs are promised, and do not materialize, who is accountable? When other community benefits are promised (if they are even promised), who ensures that these promises are kept? Sacramento was the only case study that seemed to bother to keep track of any of these promises. Yet, of today, the best recourse for the public to impose consequences is to vote is for citizens to vote out politicians who awarded the subsidies. However, voting is a complex decision, and the voting out of politicians does not ensure an improvement in accountability going forward. Although the state does provide a backstop in terms of courts and auditing agencies, these are circumscribed in their ability to conduct review and impose consequences. With public participation and review lacking, one can expect not only overall accountability, but also social responsibility, to be weakened.

C. Improving Good Governance Going Forward

This study of three publicly subsidized stadium projects applied principles of good governance: transparency, public participation, social responsibility, and review. The study showed how Edmonton, Sacramento, and Cobb County applied these principles to differing degrees. In setting out the implications of this study going forward, I will presume that stadiums are likely to be publicly subsidized for the foreseeable future, and the question is why and how to apply good governance principles to stadium subsidies.

1. *Risks of De-Legitimization*

When it comes to public subsidies of stadiums, I suggest that there are four key active parties: proponents (including the team), opponents, non-interested but affected citizens, and the government. All four of these parties can use good governance principles as a way to re-frame the stadium subsidy debate. But before re-framing the debate, the question remains: why would stadium proponents and governments bother with good governance principles? There seem to be few signs of stadium subsidies slowing down. However, there is a risk that stadium subsidies become illegitimate, undermining the position of proponents and governments.

This situation has happened with the Olympic Games. For years, hosting the Olympic Games was an aspiration of aspiring world-class cities. However, as the financial outcomes of hosting the Olympic Games have soured, and other problems from infra-

structure to human rights, have raised their heads, opposition to hosting the Games has strengthened.²⁸¹ This can most clearly be seen in referendums to host the Olympic Games. When referendums are held to host the Olympics, people vote against the Games.²⁸² Although the International Olympic Committee has reformed the host selection process in recent years, bidding cities are still looking for transparency and higher trust in the process, amongst other things.²⁸³

It is possible that, in the near future, people could organize in order to protest, or even force referendums to block stadium subsidies. To avoid this situation, proponents and governments should be proactive, and improve the good governance of their processes.

2. *Benefits of Good Governance for the Parties*

First, proponents of stadium subsidies could increase the legitimacy of their case. For example, by engaging in a transparent and participatory process, proponents could get valuable feedback to improve their proposals. By engaging in social responsibility, proponents could win valuable support for their plans. And by allowing review, teams and their owners would look less like mercenary billionaires, and more like long-term stakeholders in the community.

Second, opponents of publicly subsidized stadiums can use principles of good governance to demand better outcomes for the public. Using transparency and public participation, these groups can demand a seat at the table to participate in the discussions, or a referendum to require proponents to obtain popular support. Using social responsibility and review, these groups can request con-

281. For a discussion on the legitimacy of the Olympic Games' host selection process, see GAUTHIER, *supra* note 77, at 103.

282. See Robert Livingstone, *BidWeek: A Short History of Olympic Bid Referendums*, GAMESBIDS.COM (Nov. 9, 2018), <https://gamesbids.com/eng/winter-olympic-bids/2026-olympic-bid-news/bidweek-a-short-history-of-olympic-bid-referendums/> [<https://perma.cc/K7XS-8VHW>] (“Many more Winter Olympic bids have faced public votes than their Summer counterparts due to the complexity and cost of the special venues that need to be constructed. Almost two-thirds of the bids for the past two Winter Olympics awarded have dropped from the race for various reasons. In very recent years, the prospect of a public vote alone has often been enough to cause the abandonment of a bid – and most votes that have proceeded have failed to get the majority support needed to move the project forward.”).

283. See Robert Livingstone, *Bidders Look for More Clarity, Transparency When Vying to Host Major Sport Events Through Dialogue: Survey*, GAMESBIDS.COM (Nov. 29, 2022), <https://gamesbids.com/eng/summer-olympic-bids/future-summer-bids/bidders-look-for-more-clarity-transparency-when-vying-to-host-major-sport-events-through-dialogue-survey/> [<https://perma.cc/HG7G-U77B>].

cessions to better their communities, and to make sure that promises made are promises kept.

Third, ordinary citizens could benefit from a good governance framework. Instead of being presented with economic facts and figures, many of which are questionable, citizens could be presented with most concrete social outcomes from a new stadium. Citizens would also benefit by being asked to participate in the process, to have increased ownership over a significant civic project.

Finally, governments can use principles of good governance to evaluate stadium proposals, particularly as an analytical tool. Governments can move beyond economic impact assessments, which are troublesome, and environmental impact assessments, which are narrow in scope. Instead, governments can use principles of good governance to move towards a more holistic community impact assessment.

3. *Implementing Good Governance in Stadium Subsidies*

How could good governance principles be implemented in practice? The most direct, but probably most difficult route, would be to enact legislation. Legislation at the municipal, state/provincial, or perhaps even federal, levels could mandate good governance practices to be implemented into any agreement for a publicly subsidized stadium. Examples of *ex ante* requirements could be requiring a plebiscite or referendum before agreeing to subsidize a stadium, or requiring that various vulnerable stakeholders (e.g., low-income groups, indigenous or racialized groups, or the homeless) are consulted. The legislation could also include some *ex post* measures, such as a clause mirroring the “Art Modell Law” discussed in Part 2 of this article, that would lessen threats of relocation.

A second option to include good governance elements into publicly subsidized stadium agreements is simply including clauses in the contracts between the municipality and the team that reflect these principles. Given that agreements in Edmonton, Cobb County, and other municipalities are publicly available, “best practices” of good governance could be identified and simply repeated across agreements.

A third potential solution is the creation of an ombudsperson. Kukui Claydon proposes the creation of a “Public Advocate Counsel”, which would be involved in the negotiations.²⁸⁴ Claydon’s

284. See Claydon, *supra* note 52, at 466.

Public Advocate Counsel would be an office of “knowledgeable attorneys and other professionals in the fields of public/private partnerships, land subsidies, stadium deals, sports law, negotiation and public advocacy.”²⁸⁵ The Counsel would act as advisors to the city, but also “represent[] taxpayer interest” under Claydon’s model.²⁸⁶ I think it would be more advisable to have a truly neutral ombudsperson, as Claydon’s potential advisory capacity makes the “Public Advocate Counsel” more of an attorney to the city, rather than an independent body. A truly neutral ombudsperson could act as a recipient of complaints, and an ongoing auditor. Such a person could oversee multiple stadium agreements.

These test cases of good governance principles applied to publicly subsidized stadiums set the stage for future studies. An in-depth case study could follow a publicly subsidized stadium from proposal to completion. Such a study may help explain why choices to engage in, or avoid, particular practices of good governance are made. A ‘large-*n*’ study of multiple projects, using more specific indicators than the broad principles used here, could create a benchmark of stadium agreements and good governance. This sort of study may also be able to better address the question of whether better governance leads to better outcomes. Another study could more closely examine the legislation around stadium subsidies, and in particular areas such as freedom of information and referendum requirements.

VII. CONCLUSION

Economists have reached a general consensus that publicly subsidized stadiums are not worth the money. Despite this reality, stadiums are still built with public funds. While the cost/benefit debate is important to continue, it seems unlikely that the practical outcome will change in the near future. This Article takes a different approach. Instead of arguing how public subsidies should be stopped, it argues that publicly subsidized stadiums can be better than they are. It shows that principles of good governance can be applied to stadium agreements to not only improve the process, but perhaps even improve the outcomes of stadium deals.

By re-framing the debate, debates over stadium subsidies may become less intractable. Cities that are still willing to subsidize stadiums could focus less on dollars and cents, and instead craft deals

285. *See id.* at 469.

286. *See id.* at 470.

that benefit their citizens in a broad sense. They could insist upon community benefits that are measured, reviewed, and enforced. These practices may make such deals easier to sell to their citizens. Team ownership would also look like good community members, instead of disengaged billionaires. By applying principles of good governance, cities subsidizing a stadium could set a positive example for all future stadiums to follow.

