

ORDINANCE No.

SUBSTITUTE
184443

Improve land use regulations related to schools as part of the Schools and Parks Conditional Use Code Refinement Package (Ordinance; Amend Title 33)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. This ordinance represents one of two components of the Schools and Parks Conditional Use Code Refinement Project and addresses regulations associated with schools only. Regulations associated with recreational fields used for organized sports were addressed in Ordinance No. 183750, which took effect on June 4, 2010.
2. On October 28, 2008, the Planning Commission held a public discussion on schools-related issues that had been raised during a previous Planning Commission hearing on the City's periodic review work plan. Time did not allow for everyone to speak.
3. On December 4, 2008, Planning Commission held an additional meeting to discuss school-related issues and invited those who were not able to speak at the Oct 28th meeting to testify.
4. In January 2009, a project website was established to provide the public with updates on the project, staff contact information, and access to project materials.
5. On March 23, 2009, staff presented their initial recommendations on the Schools and Parks Conditional Use Code Refinement Project to the Citywide Land Use Chairs and asked for their feedback.
6. On April 17, 2009, notice was sent to the project mailing list and all persons interested in legislative projects city-wide (approximately 1,100 addresses) announcing the availability of the *Schools and Parks Conditional Use Code Refinement Project – Public Review Draft* and an open house/discussion/community meeting on May 7, 2009.
7. On April 28, 2009, the *Schools and Parks Conditional Use Code Refinement Project – Public Review Draft* was published and posted on the project website. The public review comment period extended to May 29, 2010.
8. On May 7, 2009, an open house and community discussion was attended by approximately 20 people.
9. On July 28, 2009, the Planning Commission held a project briefing/discussion and invited interested parties to discuss their ideas and concerns about the Schools and Parks Conditional Use Code Refinement Project. Planning Commission supported staff's suggestion that, due to its complexity, code language for recreational field uses be separated from the package of code amendments related to schools.
10. On August 5, 2009 notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.

11. On August 19, 2009, the *Schools and Parks Conditional Use Code Refinement Project – Report to Planning Commission* was published.
12. On August 21, 2009, notice was sent to the project mailing list and all persons interested in legislative projects city-wide (approximately 1,100 addresses) announcing the Planning Commission public hearing on September 22, 2009 and an open house on September 15, 2009.
13. On September 15, 2009 staff held an open house.
14. On September 22, 2009, the Portland Planning Commission held a public hearing on the proposed school-related amendments to the Zoning Code and considered conceptual changes to recreational field regulations.
15. On November 10, 2009, the Portland Planning Commission held a public hearing on the proposed school-related amendments to the Zoning Code.
16. On January 12, 2010, the Planning Commission held a hearing and adopted the schools component of the project.
17. On March 23, 2010 notice was sent to all those who testified, wrote, or asked for notice, as well as other interested persons to notify them of the City Council hearing on the Planning Commission's recommendations for the Schools and Parks Conditional Use Code Refinement Project.
18. On April 22, 2010, City Council held a public hearing on the Schools and Parks Conditional Use Code Refinement Project. They continued the hearing to April 28, 2010.
19. On April 28, 2010, City Council focused on the Recreational Fields aspects of the project, and deferred discussion of the schools-related issues to a later date. They adopted amendments to the Recommended Draft outlined in a memo dated April 28, 2010.
20. On May 5, Council adopted Ordinance 183750, which took effect on June 4, 2010. That ordinance addressed only the Recreational Fields amendments.
21. On February 4, 2011, notice was sent to all those who testified, wrote, or asked for notice, as well as other interested persons to notify them of the City Council hearing on the Planning Commission's recommendations for the schools-related elements of the Schools and Parks Conditional Use Code Refinement Project.
22. On February 9, 2011, the Mayor published an alternative proposal. The alternative proposal was posted on the Bureau of Planning and Sustainability website and was available from the Mayor's Office. This alternative proposal differs from the Planning Commission's recommended proposal concerning the school-related elements in two ways. First, the alternative proposal regulates two levels of schools instead of three. Second, the alternative proposal reduces the review procedure from a Type III to a Type II for schools adding lower grades.
23. On February 23, 2011, City Council held a public hearing on the schools-related elements of the Schools and Parks Conditional Use Code Refinement Project.
24. On March 2, 2011 City Council voted to adopt this ordinance and amend Title 33, Planning and Zoning.

Findings on Statewide Planning Goals

25. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with state land use goals. Only the state goals addressed below apply.
26. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided numerous opportunities for public involvement, including:
 - On October 28, 2008, the Planning Commission held a public discussion on schools-related issues that had been raised during a previous Planning Commission hearing on the City's periodic review work plan. Time did not allow for everyone to speak.
 - On December 4, 2008, Planning Commission held an additional meeting to discuss school-related issues and invited those who were not able to speak at the Oct 28th meeting.
 - In January 2009, a project website was established to provide the public with updates on the project, staff contact information, and access to project materials.
 - On March 23, 2009, staff presented their initial recommendations on the Schools and Parks Conditional Use Code Refinement Project to the Citywide Land Use Chairs and asked for their feedback.
 - On April 17, 2009, notice was sent to the project mailing list and all persons interested in legislative projects city-wide (approximately 1,100 addresses) announcing the availability of the *Schools and Parks Conditional Use Code Refinement Project – Public Review Draft* and an open house/discussion community meeting on May 7, 2009.
 - On April 28, 2009, the *Schools and Parks Conditional Use Code Refinement Project – Public Review Draft* was published and posted on the project website. The public review comment period extended to May 29, 2010.
 - On May 7, 2009, an open house community discussion was attended by approximately 20 people.
 - On July 28, 2009, the Planning Commission held a project briefing/discussion and invited interested parties to discuss their ideas/concerns about the Schools and Parks Conditional Use Code Refinement Project.
 - On August 5, 2009 notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
 - On August 19, 2009, the *Schools and Parks Conditional Use Code Refinement Project – Report to Planning Commission* was published.
 - On August 21, 2009, notice was sent to the project mailing list and all persons interested in legislative projects city-wide (approximately 1,100 addresses) announcing the Planning Commission public hearing on September 22, 2009 and an open house on September 15, 2009, in compliance with PCC Chapter 33.740 (Legislative Projects)..
 - On September 15, 2009 staff held an open house.
 - On September 22, 2009, the Portland Planning Commission held a public hearing on the proposed school-related zoning code proposals and considered conceptual changes to recreational field regulations.
 - On November 10, 2009, the Portland Planning Commission held a public hearing on the proposed school-related zoning proposals.

- On January 12, 2010, the Planning Commission held a hearing and adopted a recommendation on the schools component of the project consistent with PCC Chapter 33.740..
 - On March 23, 2010 notice was sent to all those who testified, wrote, or asked for notice, as well as other interested persons to notify them of the City Council hearing on the Planning Commission's recommendations for the Schools and Parks Conditional Use Code Refinement Project.
 - On April 22, 2010, City Council held a public hearing on the Schools and Parks Conditional Use Code Refinement Project. They continued the hearing to April 28, 2010.
 - On April 28, 2010, they focused on the Recreational Fields aspects of the project, and deferred discussion of the schools-related issues to a later date. They adopted amendments to the Recommended Draft outlined in a memo dated April 28, 2010.
 - On May 5, Council adopted Ordinance 183750, which took effect on June 4, 2010. That ordinance addressed only the Recreational Fields amendments.
 - On February 4, 2011, consistent with PCC Chapter 33.740, notice was sent to all those who testified, wrote, or asked for notice, as well as other interested persons to notify them of the City Council hearing on the Planning Commission's recommendations for the schools-related elements of the Schools and Parks Conditional Use Code Refinement Project.
 - On February 9, 2011, the Mayor published an alternative proposal. The alternative proposal was posted on the Bureau of Planning and Sustainability website and was available from the Mayor's Office.
 - On February 23, 2011, City Council held a public hearing on the schools-related elements of the Schools and Parks Conditional Use Code Refinement Project.
27. **Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions and assures that decisions and actions are based on an understanding of the facts relevant to the decision. The amendments support this goal because: Title 33, Planning and Zoning, implements the policies of Portland's Comprehensive Plan. Specifically, the legislative process in PCC Chapter 33.740 and the post-acknowledgment review process in ORS 197.610-197.625 ensure that there are processes that act as a basis for legislative land use decisions and the schools-related elements were processed using these procedures. See also findings for Portland Comprehensive Plan Goal 1, Metropolitan Coordination, and its related policies and objectives.
28. **Goal 11, Public Facilities and Services**, requires planning and development of a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for development. The Goal requires urban local governments to plan for the following facilities: police protection; sanitary facilities; storm drainage facilities; planning, zoning and subdivision control; health services; recreation facilities and services; energy and communication services; and community governmental services.

These Goal responsibilities are carried out through Portland's acknowledged comprehensive plan which divides service responsibility into those which the City provides, and those which the City encourages other local governments and special districts to provide. Portland Comprehensive Plan policy 11.1 A. states, in part, "The City of Portland should encourage the planning efforts of those agencies providing the following services: (8) public schools;" Goal 11 and Policy 11.1 do not apply to this ordinance because the ordinance provides for the more efficient utilization of existing school facilities rather than the provision of new schools needed to support a present or expected

overall increase of school age children. Nevertheless the ordinance is in keeping with the “encouraging” spirit of Policy 11.1 and Goal 11 by providing school districts with the flexibility needed to accommodate fluctuations in the number of students attending any particular school, and by extending the time a school site may remain vacant and still retain rights to be used as a school without additional land use review.

29. **Goal 12, Transportation**, requires provision of a safe, convenient, and economic transportation system. The proposed code amendments are consistent with this goal for the reasons stated in the findings addressing Portland Comprehensive Plan Goal 6, Transportation, and its related policies and objectives.
30. The **Oregon Transportation Planning Rule (TPR)** was adopted in 1991 and amended in 1996 and 2005 to implement State Goal 12. The TPR requires certain findings if the proposed regulation will significantly affect an existing or planned transportation facility.

Current regulations require that schools physically expanding above a minimum threshold go through a conditional use review. This proposal will not have a significant effect on existing or planned transportation facilities because that requirement will not be changing.

Within an existing school facility, where no expansion is proposed, the amendments will allow day-to-day fluctuations in enrollment and some variation in the grade levels being taught at the elementary level. These changes may result in some variations in the composition of the student body at a school, but no increases in the number of students so extensive that they will result in changes to the functional classification of any streets, change the City’s standards for classifying streets, or result in levels of school or park uses that will negatively affect the performance or classification of existing facilities. As stated in the February 22, 2011 memo from the Bureau of Transportation (Exhibit C):

"Impacts from increased enrollment or grade level changes that do not require an increase in building area are generally operational. Such changes are unlikely to create a nexus that would require additional transportation-related conditions placed on the school to mitigate impacts. A nexus would most likely be created when vehicle trips and occupancies exceed the capacity of the originally approved conditional use or, in the case of grandfathered schools, the capacity the school was designed to accommodate. In short, such changes do not create significant transportation impacts, and so we are comfortable with not requiring a Conditional Use Review for such changes."

As a result, the proposed code amendments will not significantly affect existing or planned transportation facilities.

Findings on Metro Urban Growth Management Functional Plan

31. **Title 1, Requirements for Housing and Employment Accommodation**, requires that each jurisdiction contribute its fair share to increasing the development capacity of land within the Urban Growth Boundary. This requirement is to be generally implemented through citywide analysis based on calculated capacities from land use designations. The amendments are consistent with this title because they do not significantly alter the development capacity of the city. See also findings under Comprehensive Plan Goals 4 (Housing) and 5 (Economic Development).
32. **Other Metro Titles**. These amendments are consistent with other Metro Titles because they do not change regulations that implement the other Titles.

Findings on Portland's Comprehensive Plan Goals

33. Only the Comprehensive Plan goals addressed below apply.

34. **Goal 1, Metropolitan Coordination**, calls for the Comprehensive Plan to be coordinated with federal and state law and to support regional goals, objectives and plans. **Policy 1.4, Intergovernmental Coordination**, requires continuous participation in intergovernmental affairs with public agencies to coordinate metropolitan planning and project development and maximize the efficient use of public funds. The amendments support this goal and this policy because a number of other government agencies were notified of this proposal and given the opportunity to comment. These agencies include Metro, Multnomah County, and the following public school districts: Portland, Centennial, Reynolds, Parkrose, David Douglas, and Riverdale. The Bureau of Planning and Sustainability has also been working closely with the school districts to address issues, develop this proposal, and consider non-regulatory approaches.
35. **Goal 2, Urban Development**, calls for maintaining Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers. The amendments support this goal because they support flexibility for schools, while ensuring an appropriate level of review for changes to individual schools that might have significant impacts on the surrounding area. Strong and nimble school systems are integral to maintaining Portland's role as the major regional employment and population center in the State.
36. **Policy 2.1, Population Growth**, calls for allowing for population growth within the existing city boundary by providing land use opportunities that will accommodate the projected increase in city households. **Policy 2.19, Infill and Redevelopment**, encourages infill and redevelopment as a way to accommodate expected increases in population. These amendments allow for fluctuation in school enrollments without cumbersome land use reviews, while requiring review for changes to individual schools that will have a significant effect on the surrounding area. In addition, the amendments extend the time school sites may remain vacant without losing their vesting as schools. The combined effect of these amendments is to support Policies 2.1 and 2.19 by allowing schools to be more flexible with appropriate levels of review, and so accommodate a growing and dynamic population.
37. **Policy 2.23, Central City Plan; Policy 2.26, Albina Community Plan; and Policy 2.27, Outer Southeast Community Plan**: The Central City, Albina, and Outer Southeast plans call for strong neighborhoods and schools; the proposed amendments support these policies and plans because they will strengthen the school systems by allowing more flexibility—with an appropriate level of review—and extending the time school sites may remain vacant without losing their vesting as schools.
38. **Goal 3, Neighborhoods**, calls for the preservation and reinforcement of the stability and diversity of the city's neighborhoods while allowing for increased density. The amendments support this goal by allowing schools needed flexibility while ensuring an appropriate level of review for changes that might have a significant effect on the surrounding area and by allowing vacant school sites to remain vested as school sites for a longer period of time. This increases the ability of the school districts to retain school uses in existing buildings, which reinforces and strengthens neighborhoods. It also requires public review of changes where appropriate, ensuring that changes to individual schools do not have negative impacts on neighborhoods.
39. **Policy 3.2, Social Conditions**, calls for the provision of programs to minimize the social impact of land use decisions. By clarifying when a land use review is required for adding grades to an existing school, the potential impacts of the addition can be addressed and mitigated, thus minimizing the impacts and supporting this policy. By clarifying when a land use review is not required, it allows school districts the flexibility to make changes that may enhance social conditions in the area without the expense and time of a land use review.

40. **Goal 6, Transportation**, calls for developing a balanced, equitable, and efficient transportation system that provides a range of transportation choices; reinforces the livability of neighborhoods; supports a strong and diverse economy; reduces air, noise, and water pollution; and lessens reliance on the automobile while maintaining accessibility.

Current regulations require that schools physically expanding above a minimum threshold go through a conditional use review. The conditional use review includes a determination of whether the expansion meets the City's adopted level of service performance standards for transportation. If the level of service standards are exceeded by the proposed expansion, the city can deny permits for the expansion or require mitigation so that the level of service standards are met. These regulations are not being amended, and so will not have a significant effect on existing or planned transportation facilities.

Within an existing school facility, where no expansion is proposed, the amendments will allow day-to-day fluctuations in enrollment and some variation in the grade levels being taught at the elementary level. These changes may result in some variation in the composition of the student body at a school, but no increases in the number of students to the extent that they will have any significant effects on existing or planned transportation facilities.

41. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process, and the implementation, review, and amendment of the Comprehensive Plan. This project followed the process and requirements specified in Chapter 33.740, Legislative Procedure. The amendments also support this goal for the reasons found in the findings for Statewide Planning Goal 1, Citizen Involvement, and the general findings of this ordinance.
42. **Goal 10, Plan Review and Administration**, calls for periodic review of the Comprehensive Plan, for implementation of the Plan, and addresses amendments to the Plan, to the Plan Map, and to the Zoning Code and Zoning Map. The amendments support this goal by updating and clarifying the process used when the number of students enrolled at a school change, and when the grades at a particular school change. In addition, the goal is supported by the amendment to allow school sites to remain vacant for a longer period without losing the right for a school to be reestablished without a land use review.
43. **Policy 10.10, Amendments to the Zoning and Subdivision Regulations**, calls for amendments to the regulations to be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city. These amendments are clear and concise; they provide clear distinctions about what is required for each change of grade level at a school, and they are clear that review is not required for changes in the enrollment at a particular school. By adding definitions of the different levels of schools, these amendments clarify when specified regulations apply, and use consistent terminology rather than relying on State definitions.

The amendments address present and future land use problems by clarifying the regulations applicable to certain changes at schools, and balance the benefits of regulation against the cost of implementation by allowing some changes to schools without land use reviews, but requiring review when appropriate. The amendments use clear and objective standards, maintain consistent procedures, and are written clearly and organized logically.

44. **Goal 11, Public Facilities**, includes a wide range of goals and policies:
45. **Goal 11-I** calls for enhancing the educational opportunities of Portland's citizens by supporting the objectives of school districts through assistance in planning educational facilities. The amendments support this goal by clarifying what changes to schools are allowed without review and what changes

require a land use review. In addition, extending the time that a school site may remain vacant and still retain rights to be used as a school without additional review gives school districts more flexibility for planning to accommodate changes in population and enrollment.

46. **Policy 11.58, City Schools Policy**, calls for maintaining on-going coordination with Portland School District #1 (Portland Public Schools) to achieve the goals and policies of the adopted City Schools Policy. The City Schools Policy was adopted by the City in 1979 and referenced in the 1980 ordinance adopting Portland's Comprehensive Plan, but was not adopted by Portland Public Schools. The Council interprets the provisions of Policy 11.58 in the context of Policy 11.1. Particularly, the City's role is to "encourage" Portland Public Schools to provide educational services. The plain text of Policy 11.58, read in context, clearly indicates the policy is aspirational and not a mandatory criterion applicable to the adoption of this ordinance.

Nevertheless, code amendments adopted by this ordinance are in keeping with the spirit of Policy 11.58 by responding to the need of the school districts and private schools in Portland to accommodate fluctuations in the number of students attending a particular school. In addition, throughout this project the City has worked closely with Portland Public Schools and other school districts. The amendments and the process used for this project are consistent with this policy's call for ongoing coordination between the City and Portland Public Schools.

47. Recent statutory amendments to ORS Chapter 195 establish requirements for school facility planning involving both the City and large school districts within the City's boundaries. These requirements are more specific than Policy 11.58 and describe a cooperative process for development and adoption of school facility plans. In particular, the school facility plans required by ORS Chapter 195 are focused on identifying desirable new school sites, necessary physical improvements to existing schools, financial planning, capital improvement planning, and increasing the efficient use of existing schools for educational purposes. The Bureau of Planning and Sustainability and the large school districts within Portland's boundaries are in the process of implementing these statutory provisions. ORS Chapter 195 is not directly applicable to the proposed code amendments and, in any event, the proposed code amendments will not impede ongoing school facility planning efforts to achieve compliance with ORS Chapter 195.
48. The City Schools Policy, **Policy Statement 2, School Closures**, speaks to preventing school closures and the process for closing them. Although these amendments do not relate directly to this Policy Statement, extending the time schools may remain vacant and still retain rights to be used as a school without additional review will make it easier to avoid permanent closures of schools.

NOW, THEREFORE, the Council directs:

- a. Adopt Exhibit A, the Planning Commission's report entitled *Schools and Parks Conditional Use Code Refinement Project – Recommended Draft*, dated March 18, 2010.
- b. Adopt Exhibit B, Memorandum to City Commissioners from Mayor Adams, dated February 9, 2011, regarding revisions to *Schools and Parks Conditional Use Code Refinement Project – Recommended Draft*.
- c. Amend Title 33, Planning and Zoning, as shown in Exhibit A, *Schools and Parks Conditional Use Code Refinement Project – Recommended Draft*, dated March 18, 2010, and Exhibit B, Memorandum to City Commissioners from Mayor Adams, dated February 9, 2011, regarding revisions to *Schools and Parks Conditional Use Code Refinement Project – Recommended Draft*. The specific amendments adopted by this action are to the following provisions:
 - 33.100.100.B.3 through 7
 - Table 100-1
 - 33.281.020
 - 33.281.030
 - 33.281.030.B
 - 33.281.030.D
 - Table 281-1
 - 33.281.040.B.1
 - 33.281.040.B.6
 - 33.281.050
 - 33.281.050.A.3
 - 33.281.050.A.5
 - 33.281.050.B
 - 33.281.050.C
 - 33.281.050.C.1
 - 33.281.055
 - 33.815.040, 6th sentence
 - 33.815.040.B.1.f and g
- d. Adopt the commentary and discussion in Exhibit A, *Schools and Parks Conditional Use Code Refinement Project – Recommended Draft*, dated March 18, 2010; as further findings and legislative intent.
- e. Adopt the discussion in Exhibit B, Memorandum to City Commissioners from Mayor Adams, dated February 9, 2011 regarding revisions to *Schools and Parks Conditional Use Code Refinement Project – Recommended Draft* as further findings and legislative intent.

Section 2. If any section, subsection, sentence, clause, phrase, diagram, designation, or drawing contained in this Ordinance, or the plan, map or code it adopts or amends, is held to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the plan, map, or code and each section, subsection, sentence, clause, phrase, diagram, designation, and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams, designations, or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

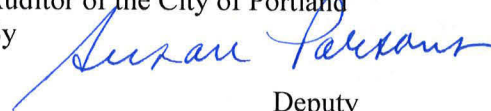
184443

Passed by the Council: MAR 02 2011
Mayor Sam Adams
Prepared by: Shawn Wood
Date Prepared: February 22, 2011

LaVonne Griffin-Valade

Auditor of the City of Portland

By



Deputy

Agenda No.

ORDINANCE NO. 184443

Title

SUBSTITUTE

Improve land use regulations related to schools as part of the Schools and Parks Conditional Use Code Refinement Package (Ordinance; Amend Title 33)

INTRODUCED BY
Commissioner/Auditor:
Mayor Sam Adams

CLERK USE: DATE FILED FEB 23 2011

COMMISSIONER APPROVAL

Mayor—Finance and Administration - Adams

Position 1/Utilities - Fritz

Position 2/Works - Fish

Position 3/Affairs - Saltzman

Position 4/Safety - Leonard

LaVonne Griffin-Valade
Auditor of the City of Portland

By:

Deputy

ACTION TAKEN:

BUREAU APPROVAL

Bureau: Planning and Sustainability
Bureau Head: Susan Anderson

Prepared by: Jessica Richman
Date Prepared: Feb. 23, 2011

Financial Impact Statement

Completed ☐ Amends Budget ☐

Not Required ☒

Portland Policy Document

If "Yes" requires City Policy paragraph stated in document.

Yes ☐ No ☒

Council Meeting Date
February 23, 2011

City Attorney Approval

AGENDA

TIME CERTAIN ☒

Start time: **2: 00 pm**

Total amount of time needed: **1 hr.**
(for presentation, testimony and discussion)

CONSENT ☐

REGULAR ☒

Total amount of time needed: _____
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA

COMMISSIONERS VOTED AS FOLLOWS:

		YEAS	NAYS
1. Fritz	1. Fritz		<input checked="" type="checkbox"/>
2. Fish	2. Fish	<input checked="" type="checkbox"/>	
3. Saltzman	3. Saltzman	<input checked="" type="checkbox"/>	
4. Leonard	4. Leonard	<input checked="" type="checkbox"/>	
Adams	Adams	<input checked="" type="checkbox"/>	