

Policy Options to Address Youth Vaping

Anne Pearson
Deputy City Attorney
San Francisco City Attorney's Office

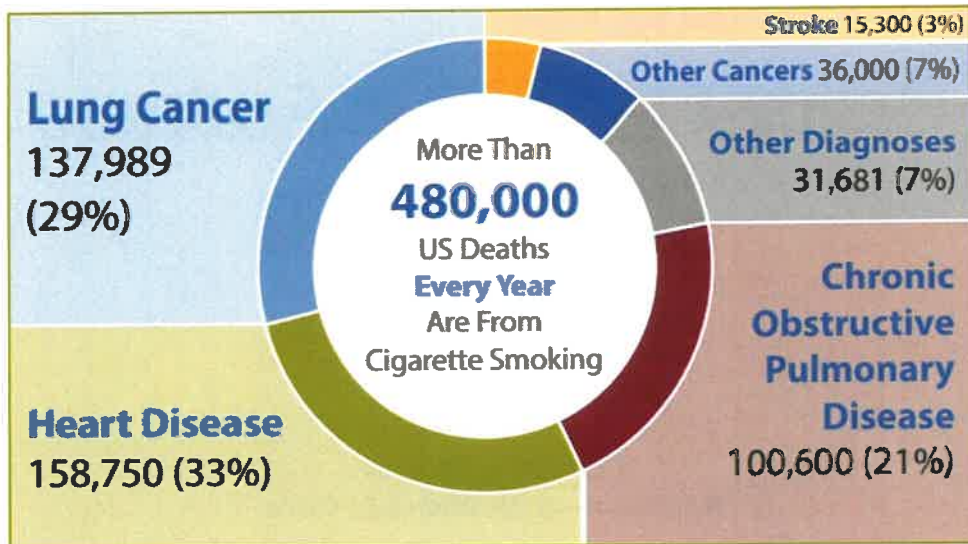
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Burden of Tobacco Use

- Tobacco use remains the single largest preventable cause of death and disease in the United States.
- Cigarette smoking kills more than 480,000 Americans each year.
- In addition, smoking-related illness in the United States costs more than \$300 billion a year, including nearly \$170 billion in direct medical care for adults and \$156 billion in lost productivity.

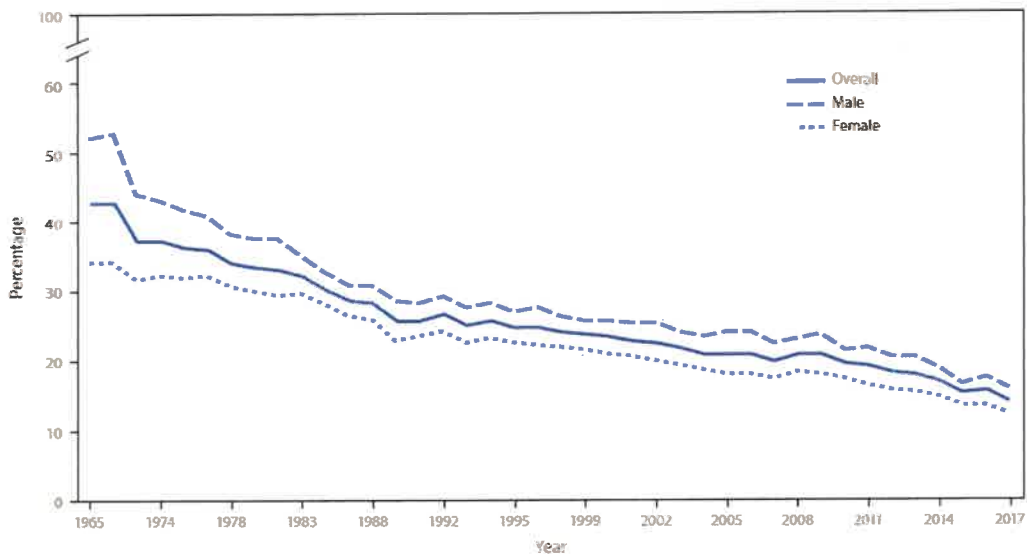
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Annual Deaths from Smoking, United States



Note: Average annual number of deaths for adults aged 35 or older, 2005–2009.
 Source: [2014 Surgeon General's Report, Table 12.4, page 660.](#)

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Tobacco use among adults – United States, 2017. MMWR

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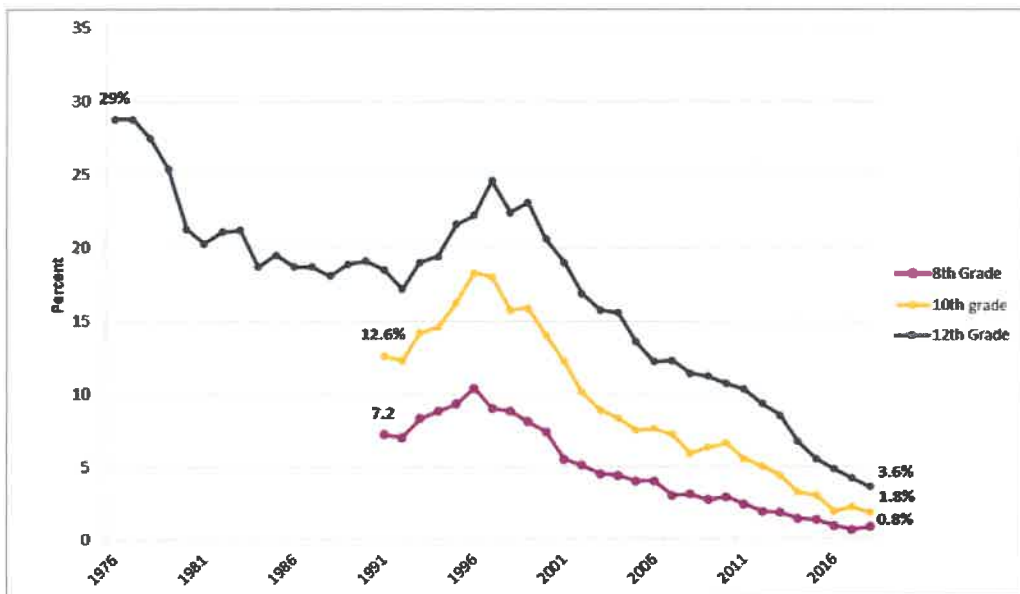
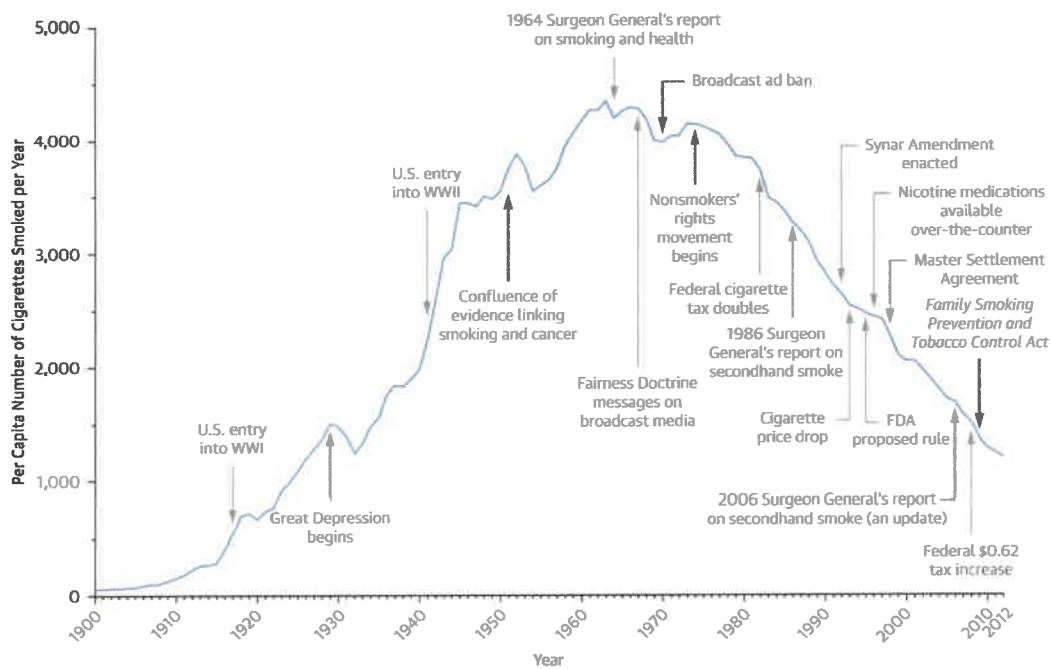
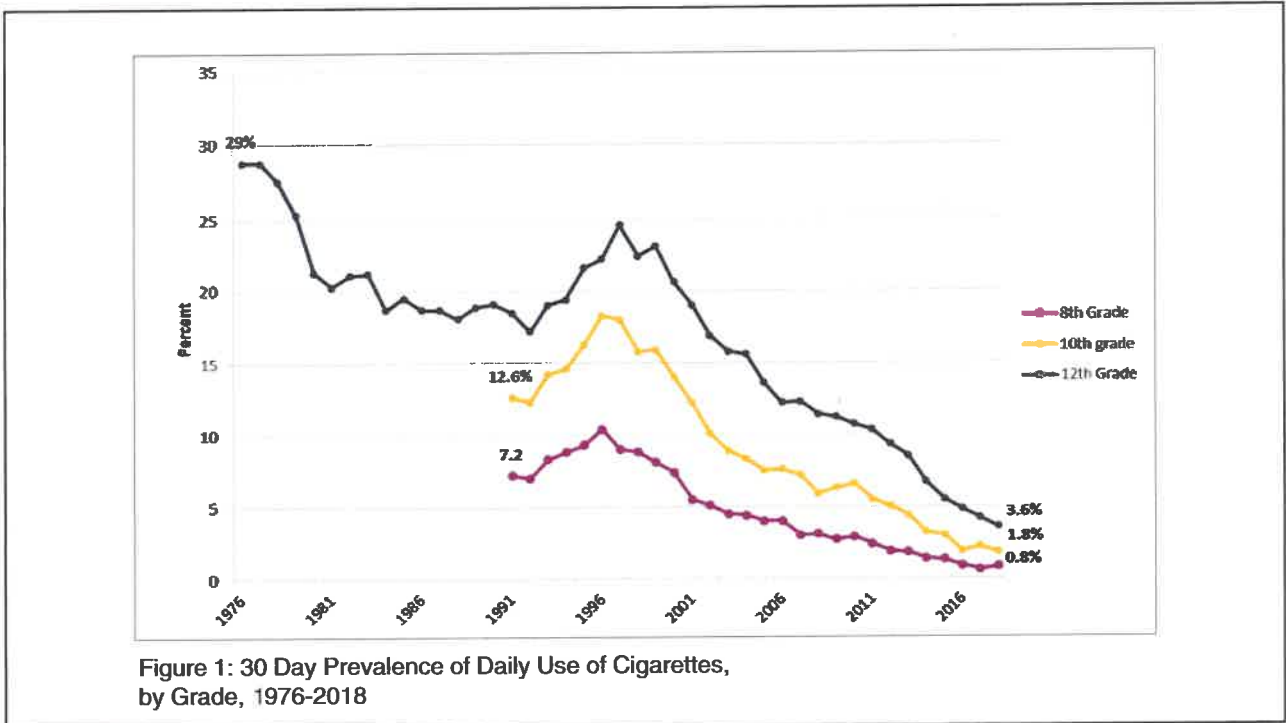


Figure 1: 30 Day Prevalence of Daily Use of Cigarettes, by Grade, 1976-2018

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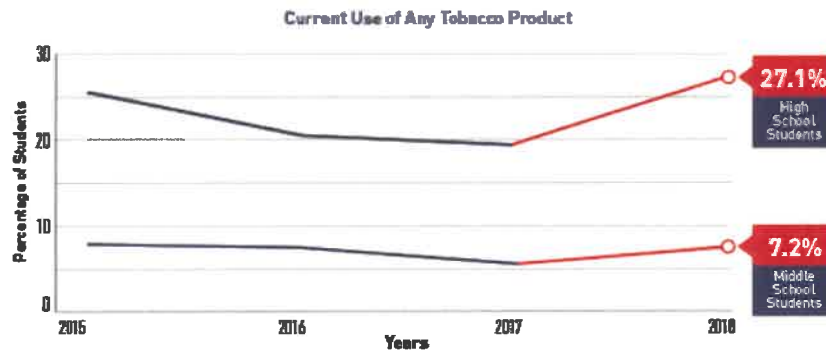


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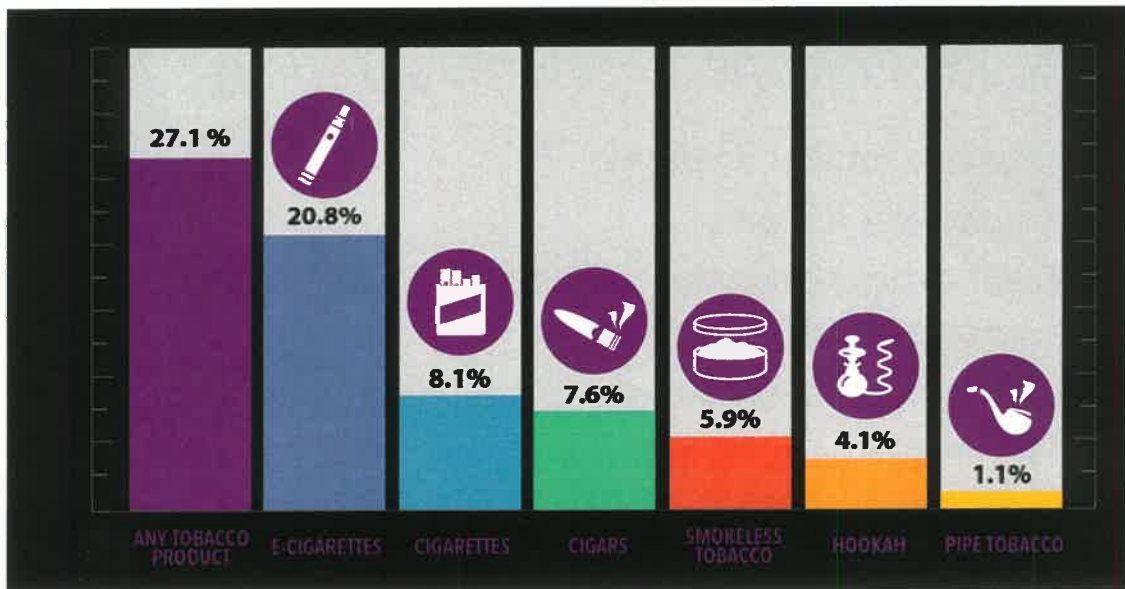


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E-CIGARETTE USE SURGE LED TO UPTICK IN OVERALL TOBACCO USE — Reversing Previous Declines

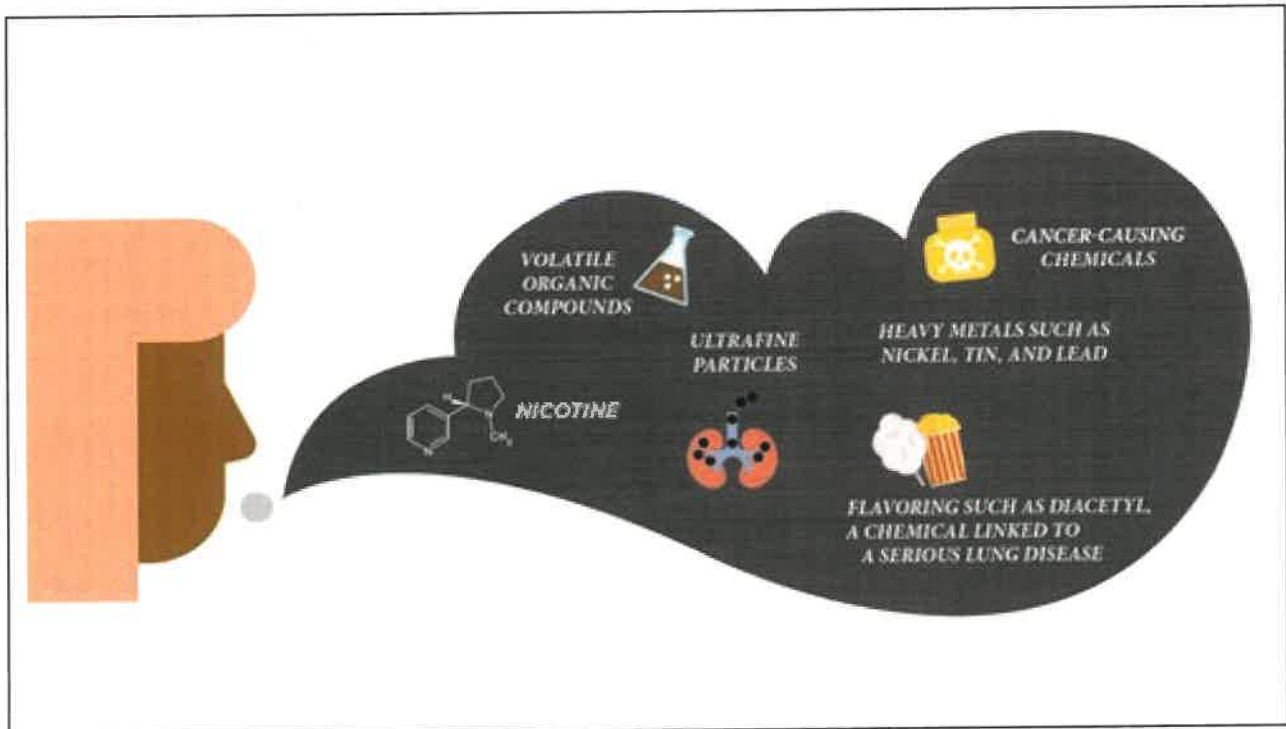


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Tobacco product use among high school students—2018

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Policy Options to Address Vaping - 101

- Tobacco retailer licensing
- Smokefree air laws
- Treat e-cigarettes like traditional tobacco products for purposes of sales/smokefree air laws
- Change definition of “tobacco product” to include e-cigarettes

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Policy Options to Address Vaping - 201

- Prohibit pharmacy sales
- Reduce number of tobacco retail outlets

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Policy Options to Address Vaping - 301

- Prohibit the sale of all flavored tobacco products
- Restrict the sale of electronic cigarettes that require – but lack – FDA premarket authorization

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Flavored Tobacco Products

- Federal law establishes a product standard that prohibits flavored cigarettes other than menthol
- Localities may prohibit the sale of flavored tobacco products
- SF has banned the sale of all flavored tobacco products, including e-cigarettes and menthol and mint flavors

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Examples of tobacco products now banned from sale in San Francisco:

"Menthol" has a distinguishable taste and aroma.

"Sour Apple" is a fruit flavor; **"Mint"** has a distinguishable taste and aroma.

"Cherry," "Nectar," "Melon," "Apple," "Raspberry," "Strawberry," "Berry" and **"Fruit Medley"** are fruit flavors; **"Crème Brûlée"** and **"Vanilla"** are candy flavors; **"Mint"** and **"Menthol"** have distinguishable tastes and aromas; **"Hawaiian Pod"** has an image indicating it contains a flavor other than tobacco.

Sold individually and in packs; those that are flavored are banned.

"Strawberry," "White Grape," "Grape," "Peach" and **"Blueberry"** are fruit flavors.

"Berry" is a fruit flavor; **mint** has a distinguishable taste and aroma.

"Lemonade" is a fruit flavored beverage; **"Raspberry," "Blueberry," "Orange," "Grape," "Cherry"** and **"Strawberry"** are fruit flavors.

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Prohibit Sales of E-Cigarettes that Lack FDA Premarket Approval

FILE NO. 190312	ORDINANCE NO. 122-19
1	[Health Code - Restricting the Sale, Manufacture, and Distribution of Tobacco Products, including Electronic Cigarettes]
2	
3	Ordinance amending the Health Code to prohibit the sale by tobacco retail
4	establishments of electronic cigarettes that require, but have not received, an order
5	from the Food and Drug Administration (FDA) approving their marketing; and
6	prohibiting the sale and distribution to any person in San Francisco of flavored
7	tobacco products and electronic cigarettes that require, but have not received, an FDA
8	order approving their marketing.
9	NOTE: Unchanged Code text and uncodified text are in plain Arial font.
10	Additions to Codes are in <i>single-asterisk italics Times New Roman font</i> .
11	Deletions to Codes are in <i>double-asterisk italics Times New Roman font</i> .
12	Board amendment additions are in <i>double-underline Arial font</i> .
13	Board amendment deletions are in <i>double-underline Arial font</i> .
14	Asterisks (" * * ") indicate the omission of unchanged Code
15	subsections or parts of tables.
16	
17	Be it ordained by the People of the City and County of San Francisco:
18	
19	Section 1. Findings.
20	(a) Despite progress in reducing smoking, tobacco use is still the leading cause of
21	preventable death in the United States. Tobacco kills more than 480,000 people in this
22	country annually -- more than AIDS, alcohol, car accidents, illegal drugs, murders, and
23	suicides combined. And beyond this large, impersonal statistic, are countless human beings,
24	whose lives are forever devastated by the irreparable loss of a loved one caused by tobacco
25	use, and the inevitable rupture of family that follows such a loss. And that is to say nothing of
26	the huge financial costs tobacco use places on our health care system, and the constraints on
27	productivity it imposes on our economic system.

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Family Smoking Prevention and Tobacco Control Act

- Enacted in 2009
- Grandfathered in most tobacco products on the market as of 2007
- Established process for FDA review/approval of new tobacco products - 21 U.S.C. § 387j
- Pre-market review to determine safety for public health

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Public Health Standard 21 U.S.C. § 387j(c)(4)

(4) **Basis for finding.** For purposes of this section, the finding as to whether the marketing of a tobacco product for which an application has been submitted is **appropriate for the protection of the public health** shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

- (A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and
- (B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

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Deadlines for FDA Review/Approval

- FSPTCA enacted 2009; did not cover e-cigarettes
- E-cigarettes on the market 2008; JUUL in 2015
- Deeming Rule enacted 2016; put e-cigarettes under FDA jurisdiction
- Deadline under Deeming Rule: 2018
- Deadline under Guidance: 2022
- Deadline imposed by Court: May 2020

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Current Status

- E-cigarettes that entered the market after 2007 require FDA review and authorization
- The court order giving them until May 2020 is just a filing deadline; it does not eliminate the current legal requirement for review/authorization
- Effective January 28, 2020, e-cigarettes that require but lack FDA authorization may not be sold in SF
- Proposition C

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Resources

- Anne Pearson: 415-554-4250
anne.pearson@sfcityatty.org
- www.Changelabsolutions.org
- Tobacco Control Legal Consortium,
www.publichealthlawcenter.org, Mark Meaney, 651-695-7642

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