



MEMORANDUM

TO: HONORABLE BOARD OF SUPERVISORS

FROM: GLYNN WASHINGTON, Legislative Analyst

CC: CLARICE DUMA, Senior Legislative Analyst

DATE: February 10, 2000

RE: SCORCHER TIRE REPORT

SUMMARY OF REQUEST

The Honorable Board of Supervisors has requested the Office of Legislative Analyst to work with the City Attorney's Office in creating legislation regulating colorized tires in the City of San Francisco.

EXECUTIVE SUMMARY

B.F. Goodrich plans to introduce a new tire in the United States, "Scorchers", that can leave colored skid marks on the road. There exists concern that the tires are designed to encourage graffiti-like gang "tagging" activity while inciting dangerous driving. The following report examines what legislative approach, if any, the City should take in regulating the tires.

ISSUE BACKGROUND

B.F. Goodrich released a new tire called the "Scorcher" August 1st, 1999. The tire allows drivers to leave colored skid marks on the road after "burning out". Various community groups and city officials have expressed concern that the tires will be used by gangs to mark turf and antagonize rivals. Police groups (led by Gilroy Police Chief, Greg Guisiana) believe that the company markets a product that encourages reckless driving. Still others, such as Napa Police Chief, Dan Monez, object to a product encouraging drivers to burn colored graffiti-like skid marks onto public property.

Michelin (owners of B.F. Goodrich) has already produced, marketed, and sold colorized tires in both Europe and Brazil (green and gold) for at least two years. Some law enforcement authorities express concern that the tire colors have been changed when marketing to US consumers (to red, blue, and yellow), in order to appeal to the North American "gang market". Among California's two largest gangs, red is the preferred color of

NortenIos, while SurenIos favor blue. Predominately African-American gangs use the same colors to assert their identities: Crips wear blue, Bloods wear red.

Michelin spokesperson, Jim Morton, insists that the tire colors were selected because they are the most popular for trim accessories in North America. A promotional video for the tires (which is no longer available from the company as a result of public outcry) declared that the tire will continue to lay a colored patch on the road even after repeated burnouts. A website promoting the Scorcher tire (also discontinued) insisted that, “Tread color shows, even as tires wear; *in burnouts tires leave a full color patch; perfect finishing touch for cosmetic/performance market.*” (emphasis added) When asked for comment, Morton claimed colors were only left on light pavement for exhibition purposes and should not be visible on the black or gray pavement common in urban areas such as San Francisco.

CURRENT CITY LAW & POLICY

Graffiti Enforcement

Article 23 § 1301 (c) of the Public Works Code defines graffiti as any “inscription, word, figure, marking, or design that is marked, etched, scratched, drawn, or painted on any building, structure, fixture or any other improvement.” Article 23 of the Public Works Code proceeds to authorize the Department of Public Works (DPW) to remove graffiti from property within the city. According to Deputy City Attorney Mario Kashou, however, public works code sections dealing with graffiti are not intended for the city to apply against itself. Instead, they are intended to require private property owners to remove graffiti on their own property, and if necessary, to allow the City to recover the cost of removing graffiti from the private property of non-compliant owners. While maintaining that the public works code dealing with graffiti does not apply to tire marks on city streets, Kashou insists that the City needs no new legislation enabling it to clean graffiti from public streets. Kashou foresees no hurdle to DPW dealing with colorized tire marks absent specific legislation empowering it to do so. John Busher of the DPW agrees that potential marks from the Scorcher tire fall under the realm of his Department, but he currently does not anticipate DPW having to deal with a plethora of colored skid marks. In the absence of legislation to the contrary, he adds that the Department is likely to adopt a “wait and see” approach to see if the Scorcher tire presents a real problem.

Criminal Concerns/Traffic Laws

San Francisco Police Department Spokesperson (SFPD), Sherman Ackerson, agrees with the DPW’s “wait and see” approach, arguing that the brightly colored tires might make it easier for witnesses and police to identify criminals fleeing crime scenes. As officers routinely use tire marks in the course of criminal investigations, Ackerson suggested that increased use of colorized tires among gang members would only serve to tell the police where to look for wrongdoers. Jerry Poccinelli, Legal Counsel for SFPD, found no provisions of the California Vehicle Code or any local laws specifically prohibiting squealing tires and leaving skid marks on public roads.

OTHER JURISDICTIONS

Jurisdictional Efforts

Thomas Springer, Vice Mayor of Gilroy, is spearheading a multi-municipal effort to halt production of the Scorcher’s tire, or at least, stop production of red and blue (gang colors) tires. Springer, and Oakland Counsellor John Russo of Oakland, presented a review of the issue to the *California League of Cities*

Mayor's Conference (including San Francisco) in August, which voted for a non-binding resolution condemning the tire. The *Santa Clara Cities Association* (with 15 member cities) adopted a policy supporting individual association cities which take action against colorized tires. The cities of San Jose and Gilroy have passed resolutions urging Michelin to stop production of the Scorcher, noting they will take all appropriate steps at the local, state, and federal levels to prevent the use of colorized tires in their respective jurisdictions.

Environmental Concerns

Both Thomas Springer, and Gilroy Police Chief, Greg Guisiana, contend that removal of the skid marks left on the ground from the Scorcher tire will require hazardous cleanup procedures. Springer insists that high pressure water or solvent system employed to remove graffiti will remove other road contaminants as well — and discharge the material into the Bay, posing an environmental hazard.

Locally, expectations are far more sanguine. John Busher of the DPW disputes the need for hazardous cleanup procedures. He cites an incident where streets were cleaned of tire marks in the past using a hot steam method (the only similar incident of record of the past ten years). Parents of the perpetrators were billed for the cost of the cleanup. Currently, Busher estimates that one hour of DPW time spent cleaning up tire marks would cost approximately \$100.

LEGISLATIVE OPTIONS

Legislation limiting the use of Scorcher's tires could potentially take several forms. Recently, the Board of Supervisors passed a resolution urging Michelin to cease advertising and marketing the Scorcher. There are additional legislative options open to the Board if Michelin ignores the call to cease distribution of the colorized tires.

Ban On Sale

The City could enact a ban on the sale of colorized tires. Both San Jose and Gilroy are currently exploring potential bans on the sale of Scorcher's. Applied to San Francisco, such legislation could forbid distributors from selling colorized tires anywhere in the City. According to the City Attorney's office, a ban on the sale of colorized tires will likely withstand potential court challenges. However, the efficacy of such a policy may prove limited. In an area with borders as porous as San Francisco, a ban on the sale of a particular tire is likely to push the tire sales outside the City's boundaries. Local tire distributors will likely protest the loss of business, while the ban will likely have but a negligible effect on the number of colorized tires on the street.

Ban On Possession

One option rejected by the City Attorney's Office as a possible means for regulation of the Scorcher is enacting an outright ban of colorized tires. Legislation considered would forbid colorized tires from being driven on any street in the City. A San Francisco ban on possession of colorized tires, according to the City Attorney's Office, may result in constitutional challenges. Such a ban on possession may be regarded as inhibiting commerce in violation of California and Federal constitutions (conceivably thwarting persons from conducting business in San Francisco).

Strict Liability

Imposition of a strict liability system is being explored as a method for regulating Scorcher's. As currently conceived, under a strict liability regime, legislation would impose liability on the manufacturer (Michelin) for the cost of any street cleanup associated with the Scorcher's tire. In effect, the legislation would empower San

Francisco, or any private property owner, to charge Michelin for its expenses in cleaning up graffiti-like marks off the street. According to the Deputy City Attorney, such a strict liability regime, a presumption of liability will be construed against the tire companies for any cost of cleanup associated with colorized tires. This type of strict liability has been imposed in at least one other arena, Washington DC, where manufacturers of assault weapons or machine guns can be held strictly liable for any injury arising from the use of those weapons. Even in a strict liability regime, however, the manufacturer retains the right to go to court and use all appropriate defenses. Such a system potentially places the City in the position of litigating every colorized skid mark on the streets.

Nuisance Abatement Fee

Another possible means of limiting the accessibility and the effect of colorized tires in the City may be to impose regulation on the supply side. A fee could be charged for the sale of every tire with the proceeds directed toward keeping City streets clear of graffiti-like skid marks. According to Deputy City Attorney Mario Kashou, it may be possible for the City to impose a surcharge on the sale of colorized tires, if the monies generated are directed towards actual skid mark cleanup.

Proposition 218 lays out certain criteria for when such a “nuisance abatement fee” can be imposed. According to Victoria Carreon, of the Los Angeles Legislative Analyst office, however, the courts have strictly interpreted Proposition 218 in recent court decisions, any potential legislation must be carefully drafted so that actual cleanup costs and the surcharge are directly related. The City Attorney’s Office has indicated that legislation attempting to capture monies spent on cleanup in the tire surcharge must be predicated on actual data indicating what the cleanup charges are. Practically, this could necessitate a study by concerned agencies as to the number of incidents involving colorized tire skid marks in the City and the cost of cleanup.

With a nuisance abatement fee program administered by the City, only distributors within the City would be affected by the additional fee. Tire distributors would likely protest legislation levying additional fees to their business, especially since the tire would be freely available outside San Francisco. Since any potential fee must be tied to actual cost of skid mark cleanup — the fee might not rise to such a level as to discourage use of colorized tires.

ADDITIONAL OPTIONS

1. *Increase DPW Cleanup Services.* The City Attorney’s Office maintains that DPW requires no further legislative authority to clean colorized skid marks off public streets.
2. *Lobby Michelin in Concert With Other Cities.* San Francisco may want to join other municipalities urging Michelin to recall its product. Already, Michelin has backed away from an early video produced showing drivers peeling from a start line leaving multicolored patches. The company now claims to discourage conditions that would lead to such a result. Further efforts on the public opinion stage may prove effective in limiting harmful effects of the product.
3. *Monitor Incidents for Initial Period.* If SFPD and DPW were to log incidents related to colorized skid marks, a review of the tire after six months may provide a better idea as to the level of the problem. Both DPW and SFPD view existing procedures as sufficient to handle potential problems in the meantime.