



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF NITKORN CHA

CASE NO. 3110234

DATE OF HEARING: August 2, 2011

APPEARANCES:

Mr. Nitkorn Cha, Appellant

Officer Charlie Asheim, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Nitkorn Cha ("Cha") appeared at the hearing and testified on his own behalf. Police Officer Asheim ("Asheim") appeared at the hearing and represented the City Bureau of Police ("Police Bureau"). Police Officers Pahlke ("Pahlke"), Polas ("Polas") and Asheim testified on behalf of the Police Bureau. The Hearings Officer makes this decision based upon the testimony of Cha, Pahlke, Polas and Asheim and the documents admitted into the evidentiary record (Exhibits 1 through and including 21).

Background:

Jurisdiction: The Hearings Officer has jurisdiction over this case based upon the terms of Portland City Code ("PCC") 14C.30.080.

Standards of Review: The standards of review in this appeal case are found in Portland Policy Document 640.05 (Police Policy and Procedure). Relevant portions of Portland Policy Document 640.05 are set forth below:

"A person will be designated as an affiliate of a criminal gang only when there is clear and convincing evidence that the person has been a criminal gang affiliate in the previous three years and, while a criminal gang affiliate, either one of the indicators on List A (listed below) was present, or two of the indicators of List B (listed below) were present.

- a. List A:
 - 1. The person admits or asserts affiliation with a criminal gang to the police.
- ...
- b. List B:
 - 1. The person displays knowledge of the gang's history, leadership, activities or rituals in a context that clearly indicates affiliation with the gang.
 - 2. The person announces to the police that the person is willing to commit assaults, crimes, or make other sacrifices for the gang.
 - 3. The person wears clothes or jewelry unique to a gang in a context that clearly indicates affiliation with a gang.
 - 4. The person uses a hand sign or language which, due to content or context, clearly indicates affiliation with the gang.
 - 5. The person's name appears on a criminal street gang document.
 - 6. The person is in a photograph with other people who collectively display criminal gang signs or apparel to exhibit solidarity.
 - 7. The person possesses a gang tattoo."

To find that Cha was properly designated a criminal gang member, the Hearings Officer must find, based upon substantial evidence in the record, one item from List A and two items from List B apply to Cha.

Evidentiary Findings: Cha requested that the Police Bureau present their witnesses first. The Hearings Officer summarizes the testimony, including cross examination responses, of each of the Police Bureau witnesses.

Pahlke, a 20-year veteran of the Police Bureau, testified that on September 24, 2009, she received a radio call that a "suspicious group of juveniles" were congregating in McKenna Park. Pahlke stated that when she arrived at McKenna Park, she observed Cha sitting at a picnic table with a group of younger males. Pahlke estimated the younger males to be 14 and 15 years old. Pahlke stated that the picnic table had been marked with "HP." Pahlke stated, based upon her experience in North Portland, that the "HP" was a reference to Hmong Pride. Pahlke stated that Hmong Pride is a recognized criminal gang. Pahlke stated that when she asked Cha why he was there with males much younger than himself, he (Cha) could give no reason. Through cross examination, Pahlke stated that she suspected Cha of attempting to recruit gang members and that McKenna Park had been the scene of prior criminal activity related to Hmong Pride and guns. Pahlke also responded to a cross examination question that some of the young males listed on Exhibit 8 (Pahlke's Special Report) are documented Hmong Pride gang members.

Polas, an eight year veteran of the Police Bureau (1 ½ years on the Gang Enforcement Team), was on patrol with Asheim on March 12, 2011. Polas stated that he observed Cha, and other individuals, outside a 7-11 convenience store and all were wearing a red shirt and beanie and tan pants. Polas stated that wearing a red shirt and tan pants is typical clothing for members of the Hmong Pride gang. Polas

testified that after a short time at the 7-11, Cha and the others got into a car and drove east on Foster Road. Polas stated that the car made an illegal lane change (failure to properly signal) and Polas and Asheim initiated a traffic violation stop. Polas stated that he identified the driver as Bee Lee ("Lee") and the two passengers as Roger Vang ("Vang") and Cha. Polas stated he interviewed Vang who admitted to being a Hmong Pride member. Polas interviewed Lee who also admitted to being a Hmong Pride member. Polas noted that Exhibit 9, a Portland Police record for Cha, indicated both Lee and Vang were known associates of Cha. In response to cross examination questions, Polas stated that his initial concern with Cha, Lee and Vang arose because all three individuals were wearing the color red. Polas stated that the color red signifies Hmong Pride gang members and when the color is worn by more than one individual in a group, it suggests the group may be anticipating violence; it appears as a flag to rival gangs that the group is prepared to defend themselves.

Asheim, a six year veteran of the Police Bureau and a member of the gang enforcement team, testified that he participated in the traffic stop on March 12, 2011, in which Lee was the driver and Vang and Cha were passengers. Asheim stated when the vehicle was stopped, Cha was a passenger in the back seat and was dressed in red. Asheim stated that he observed three tattoos on Cha ('Hmong Pride,' 'Hmong by Nature, Gangster by Choice,' and an upside down 'hp'). Asheim stated that Cha admitted to having been a member of the Hmong Pride gang since he was 13 or 14 and was considered by young members of the Hmong Pride gang to be an "OG" (original gangster). Asheim stated that Cha described recent Hmong Pride activities involving a violent rivalry with another North Portland Asian gang (M.O.D.). Asheim stated that Cha admitted that he would fight for other Hmong Pride members if they were attacked. During cross examination, Asheim stated that Cha told him that he (Cha) was too old to be an active member of the Hmong Pride gang.

Cha, during his testimony, admitted that he has been involved in many police contacts and has been arrested but has not been convicted of any crime; he stated emphatically that he is not a criminal. Cha denied wearing a red shirt on March 12, 2011 when contacted by Asheim; he indicated he was wearing a white shirt. Cha denied wearing tan pants; he stated he was wearing red shorts. Cha denied telling Asheim that he had been in the Hmong Pride gang and denied relating to Asheim Hmong Pride activities. Cha admitted to having the three tattoos described by Asheim, but testified that he intended to have them removed. Cha stated that he has a job and is not a member of Hmong Pride. Cha stated that many of the persons who were with him at McKenna Park, as described by Pahlke, were his younger relatives. Cha denied telling Asheim that members of the Hmong Pride gang called him an "OG." Cha admitted that he was aware of the gang rivalry between Hmong Pride and M.O.D. Cha stated he did not know that Lee and Vang were Hmong Pride gang members. Cha stated that Vang is a relative.

The Hearings Officer reviewed Exhibits 1 through and including 21. The Hearings Officer notes that Cha appealed his gang affiliation designation to a Police Officer (First-Stage Hearing) and before a citizen panel (Second-Stage Hearing) and was unsuccessful at each level of appeal. The Hearings Officer notes that at each level of appeal it was concluded that Cha met one of the items in List A ("you have admitted or asserted to the police that you are affiliated with a criminal gang") and three of the items from List B ("You have displayed knowledge of the gang's history, leadership, activities or rituals in a context which clearly indicates affiliation with the criminal gang" and "You wear clothes or jewelry unique to a gang in the context which clearly indicates affiliation with a criminal gang" and "You have a criminal gang tattoo").

The Hearings Officer found the testimony of Pahlke, Polas and Asheim to be credible. The Hearings Officer found the testimony of Cha to generally be less credible than that of the police officers. The Hearings Officer finds that Asheim's testimony relating Cha's statements on March 12, 2011 to be accurate and truthful. The Hearings Officer finds Asheim's and Polas' testimony regarding clothing worn by Cha on March 12, 2011 to be accurate and truthful. The Hearings Officer finds testimony of Cha, Asheim and Polas is in agreement that Cha had, and still has, three tattoos on his person ('Hmong Pride,' 'Hmong by Nature, Gangster by Choice,' and an upside down 'hp'). The Hearings Officer finds the red and tan clothing worn by Cha on March 12, 2011 indicates affiliation with the identified Hmong Pride gang. The Hearings Officer finds the tattoos clearly indicate an affiliation with the identified Hmong Pride gang.

The Hearings Officer finds, by clear and convincing evidence, that Cha did (March 12, 2011) admit to being a Hmong Pride gang member, did wear clothing that clearly identified Cha as a Hmong Pride gang member, and did/does possess tattoos that clearly identify Cha's affiliation with the Hmong Pride gang. The Hearings Officer makes no finding with respect to Cha's knowledge of Hmong Pride history, activities or rituals.

The Hearings Officer finds the Police Bureau did follow its process/procedures as set forth in Portland Policy Manual 640.05. The Hearings Officer denies Cha's appeal to have his name removed from the Police Bureau gang affiliation list.

ORDER AND DETERMINATION:

1. Mr. Nitkorn Cha shall be listed as a criminal gang affiliate (Hmong Pride); Mr. Cha's appeal is denied.
2. This order has been mailed to the parties on August 9, 2011.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: August 9, 2011

GJF:rs

Enclosure



Gregory J. Frank, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1	Cha, Nitkorn	Received
2	6/14/11 letter from Dave Benson, Bureau of Police	Cha, Nitkorn	Received
3	Request for Hearing to Appeal Gang Affiliation Designation	Cha, Nitkorn	Received
4	Mailing List	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	7/14/11 Letter requesting postponement	Osoinach, Ellen	Received
7	Gang Affiliation Designation Report	Osoinach, Ellen	Received
8	Portland Police Bureau Special Report	Osoinach, Ellen	Received
9	PPDS Complete Name Record	Osoinach, Ellen	Received
10	4/7/11 Notification Letter of Gang Designation Pending to Nitkorn Cha	Osoinach, Ellen	Received
11	4/8/11 Request for Hearing to Appeal Gang Affiliation Designation	Osoinach, Ellen	Received
12	4/21/11 1st Stage Hearing Recommendation	Osoinach, Ellen	Received
13	4/20/11 Memo to Joanne Nieshe from Sgt. Don Livingston	Osoinach, Ellen	Received
14	5/17/11 Gang Affiliation Designation 2nd Stage Hearing Appointment	Osoinach, Ellen	Received
15	5/31/11 2nd Stage Hearing Recommendation - Pam Hiller	Osoinach, Ellen	Received
16	5/31/11 2nd Stage Hearing Recommendation - Mary Tompkins	Osoinach, Ellen	Received
17	5/31/11 2nd Stage Hearing Recommendation - Tom Peavey	Osoinach, Ellen	Received
18	6/9/11 Memo to Joanne Nieshe from Lieutenant Tom McGranahan	Osoinach, Ellen	Received
19	6/14/11 Letter from Nitkorn Cha from Commander Dave Benson	Osoinach, Ellen	Received
20	Hearing Notice	Hearings Office	Received
21	Mailing List	Hearings Office	Received