Issues concerning an HOA's authority to regulate and enforce speeding and parking restrictions can be problematic and costly for both the HOA and homeowner. Specifically, can an HOA include and enforce such restrictions in their CCR's (covenants, controls, and restrictions)? We recently sent questionnaires on this topic to a few law enforcement agencies. The focus was on whether an HOA that has a gated and controlled access and maintains the streets within the neighborhood can develop and enforce speeding limits and parking restrictions. Responses support an HOA's authority to develop and enforce their own speeding and parking restrictions (see below). Note, they are enforcing their CCR's and not the local government's law. So if you receive a fine from the HOA for such a violation and you want to avoid that $25 fine morphing into a $200 debt, we suggest pay it now and fight it later. The Courts, in our opinion, will back the HOA on this issue and not you.

An issue to be addressed by the HOA in implementing restrictions is to ensure such policy is included in the CCR's, notify homeowners of the specifics on who, how, when, why, and where enforcement will take place, and publish the fee/fine schedule. The letter to homeowners should indicate that the policy has been reviewed by legal counsel and local law enforcement and is considered valid. This will help implement the policy, gain homeowner support, and hopefully keep the HOA and homeowners out of court to avoid legal costs. There are other issues such as the competency and training of any person using speed enforcement equipment, calibration of speed detection equipment, and frequency of testing speed detection equipment that should be considered by the HOA when implementing restrictions. Evidence of speeding from speed
detection equipment and/or pictures of parking violations appear to be acceptable legal evidence for enforcement.

We are not legal experts and don't advocate or challenge an HOA's right to develop and enforce speeding and parking restrictions. We do encourage any HOA to solicit homeowner involvement in developing and implementing restrictions and to ensure plans and policy are very comprehensive and detailed to avoid legal complications and homeowner push back.

A summary of questions sent to local law enforcement and their responses:**

Will police enforce speed limits and/or parking restrictions in a gated HOA?

It depends upon whether the streets are dedicated to the county - or privately owned. If they are privately owned the police (police and sheriff's office are used interchangeably) can't enforce speeding or parking violations. Deputies (deputies and police are used interchangeably) can only enforce careless driving, reckless driving, & driving under the influence of drugs or alcohol on private property.

If the streets are dedicated to the county (county, city, and local governmental entity are used interchangeably), the county would set the speed limits and parking restrictions and then provide police enforcement.

How should a gated HOA enforce their own speeding and parking restrictions?

First, the HOA should include speeding and parking restrictions enforcement in the CCR's including a fee/fine schedule, prior to enacting any enforcement.

HOA's should send notices to all residents and mention at a Board Meeting and include in minutes of meetings that such
restrictions are in the CCR’s and will be enforced, how to be enforced, and the fees/fines to be levied. Homeowner involvement in developing restrictions and a plan for implementation is critical to the success of implementing any new CCR.

Are there limits on posting and enforcing speeding and parking restrictions if they don't meet county standards?

An attorney would be the best person to answer this question. Traffic regulations are designed for community safety - to minimize or eliminate traffic accidents, injuries, property damage, and/or death - therefore, if the restrictions an HOA implements are not designed with safety in mind, i.e. 80 mph speed limits on neighborhood streets, the HOA may incur legal liability. AGAIN - you should speak to an attorney regarding this issue and work with local enforcement. Restrictions reflective of the community surrounding the HOA would seem to serve as a good guideline in developing HOA policy.

Will the county pay for and post speed limit signs within a gated HOA?

First, it depends upon whether the streets are dedicated to the county - or privately owned. If the streets are privately owned the county will not pay for, or post the signs If the streets are dedicated to the county the county will pay for, and post the signs.

Is it proper for an HOA security officer to stop and hold a person for the arrival of law enforcement?

This is a really tricky question with many answers, depending upon specific circumstances Holding a person for law enforcement against their will is considered an arrest A private citizen (security officer) may make an arrest according to Colorado Revised Statutes 16-3-201 "A person who is not a peace officer may arrest another person when any crime has
been, or is being committed by the arrested person in the presence of the person making the arrest”. The most important part of the answer to this question is: Even though the security officer can make the arrest, SHOULD THEY? - The general answer is no, they should not.

HOA's should consult local law enforcement on this topic. The action of an HOA representative detaining a homeowner related to a driving violation seems inappropriate and opens the HOA to legal complications and should be avoided. The use of speed detection equipment will avoid the need to deal directly with a driver and thus this issue can be avoided.

What enforcement activities will law enforcement perform in a gated HOA?

Generally, all law enforcement activities that are performed anywhere else (with the exceptions noted above if the streets are privately owned).

**When developing and implementing speed limit and parking policies within a gated HOA, the Board should seek legal counsel and work with local law enforcement. The HOA CCR’s should be properly amended with approval of homeowners before implementing restrictions.**