



# MEMO

## Legal Department

### Item No. 31

**To:** Mayor Haila and Ames City Council

**From:** Mark O. Lambert, City Attorney

**Date:** September 20, 2019

**Subject:** Letter from Federal Highway Administration re: inclusive crosswalk

In a letter to the City Manager, dated September 5, 2019, the Acting Division Administrator of the U.S. Department of Transportation's Federal Highway Administration (FHWA) noted that FHWA was aware of the City's inclusive crosswalk project, which involves colored rectangles within the standard white crosswalk lines at one intersection.

As before, the FHWA noted its position that its Manual on Uniform Traffic Control Devices (MUTCD) prohibited the use of anything but white paint in crosswalks and noted its "official interpretation" that colored crosswalks or art in crosswalks are not allowed.

The letter noted that the Iowa Department of Transportation had adopted MUTCD as standards for streets and highways in Iowa. That is true, and it is found at 76 Iowa Administrative Code 130.1.

The letter goes on to state that the FHWA *requests* that the City "take the necessary steps to remove the non-compliant crosswalk art as soon as it is feasible."

It appears that the FHWA does not have jurisdiction over the roads in question, at the intersection of 5<sup>th</sup> Street and Douglas in Ames. The FHWA did not have a direct answer to this question, and it appears they are still researching whether they have any regulatory authority in this situation. These streets are not part of a federal highway and these streets receive no federal funding. With the system of federalism in the United States, the federal government does not have jurisdiction over everything. The adoption of the MUTCD by the State of Iowa

would suggest it is up to the State to enforce the standards in the MUTCD on streets other than federal highways or streets which receive federal funding.

I note that the FHWA's letter included a "request" – not a demand – for the City to remove the colored crosswalk markings. This is not a lawful order or demand by a federal agency, it is merely a request.

I spoke to the FHWA Iowa Division office in Ames, and asked a question which Damion Pregitzer had asked them earlier: "Are there any penalties for not being in compliance with the MUTCD?" The answer was that they are checking into it, which I take to mean that they are unaware of any penalties right now. The FHWA officials did confirm that removal of the colored crosswalk was only a request at this point, not a demand. If that changes, they would contact the City about compliance before implementing any penalties (if they discover penalties can be implemented).

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U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**Iowa Division**

105 6<sup>th</sup> Street  
Ames, Iowa 50010  
(515) 233-7300  
(515) 233-7499  
Iowa.FHWA@dot.gov

September 5, 2019

In Reply Refer To:  
HDA - IA

Steve Schainker, City Manager  
City of Ames  
515 Clark Avenue  
Ames, IA 50010

Dear Mr. Schainker:

It recently came to our attention that the City of Ames installed a non-standard crosswalk at the intersection of 5<sup>th</sup> Street and Douglas Avenue in downtown Ames. Non-standard crosswalks and other forms of crosswalk art are not compliant with the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is adopted by reference in accordance with Title 23 of the United States Code, Sections 109(d) and 402(a), and Title 23, Code of Federal Regulations, Part 655.603, and is approved as the national standard for designing, applying, and planning traffic control devices. Iowa Administrative Code 761 adopts the MUTCD as Iowa's standard for traffic control devices and it is applicable to all public roads in Iowa.

We request that you take the necessary steps to remove the non-compliant crosswalk art as soon as it is feasible. Crosswalk art has a potential to compromise pedestrian and motorist safety by interfering with, detracting from, or obscuring official traffic control devices. The art can also encourage road users, especially bicycles and pedestrians, to directly participate in the design, loiter in the street, or give reason to not vacate the street in an expedient or predictable manner. It also creates confusion for motorists, pedestrians, and other jurisdictions who may see these markings and install similar crosswalk treatments in their cities. Allowing a non-compliant pavement marking to remain in place presents a liability concern for the City of Ames in the event of a pedestrian/vehicle or vehicle/vehicle collision.

The installation of crosswalk art has been an issue in various locations across the country for several years. In 2013, FHWA issued an official interpretation of the MUTCD to clarify our position. The interpretation covers several aspects of the appropriate use of colored pavements, but specifically clarifies the use of aesthetic treatments and the use of colored patterns within crosswalk markings. The official interpretation can be found at [https://mutcd.fhwa.dot.gov/resources/interpretations/3\\_09\\_24.htm](https://mutcd.fhwa.dot.gov/resources/interpretations/3_09_24.htm).

The white crosswalk markings allowed in Part 3 of the MUTCD are tested and proven to be recognized as a legally marked crossing location for pedestrians. Crosswalk art diminishes the contrast between the white lines and the pavement, potentially decreasing the effectiveness of the crosswalk markings and the safety of pedestrian traffic. The purpose of aesthetic treatments and crosswalk art is to "draw the eye" of pedestrians and drivers, in direct conflict with commanding the attention of drivers and motorists to minimize the risk of collision.

In bringing this matter to your attention, our intent is to notify you of the non-compliance of the crosswalk marking at this specific location, but also to ensure your awareness in the event crosswalk art projects may be in the planning stages for other locations. If you have any questions relating to this issue, please contact Paul LaFleur in our office at (515) 233-7308 or by email at [paul.lafleur@dot.gov](mailto:paul.lafleur@dot.gov).

Sincerely,

A handwritten signature in black ink that reads "Mark A. Johnson". The signature is written in a cursive style with a large, looped initial "M".

Mark Johnson  
Acting Division Administrator