

ORDINANCE NO. 03-666

AN ORDINANCE RELATING TO utilities; to change provisions related to civil actions for diversion of services; to provide for definitions of terms; to harmonize with state law; to repeal conflicting ordinances and sections; and to provide an effective date.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FRIEND, NEBRASKA:

Section 1. Section 3-404 of the Municipal Code of Friend, Nebraska, is amended to read as follows:

DIVERSION OF SERVICES; CIVIL ACTION.

(A) For purposes of this section, the definitions found in Neb. RS 25-21,275 shall apply.

(B) (1) The municipality may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts (a) bypassing, (b) tampering, or (c) unauthorized metering when such act results in damages to a municipal utility. The municipality may bring a civil action for damages pursuant to this section against any person receiving the benefit of utility service through means of bypassing, tampering or unauthorized metering.

(2) In any civil action brought pursuant to this section, the municipality shall be entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering to recover as damages:

(a) The amount of actual damage or loss if the amount of the damage or loss is susceptible of reasonable calculation; or

(b) Liquidated damages of \$750.00 if the amount of actual damage or loss is not susceptible of reasonable calculation.

(3) In addition to damage or loss under subdivision (2)(a) or (b), the municipality may recover all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering including, but not limited to, disconnection, reconnection, service calls, equipment, costs of the suit, and reasonable attorneys' fees in cases within the scope of Neb. RS 25-1801.

(Neb. RS 25-21,276)

(C) (1) There shall be a rebuttable presumption that a tenant or occupant at any premises where bypassing, tampering or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the tenant or occupant (a) had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist and (b) was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services to the premises.

(2) There shall be a rebuttable presumption that a customer at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the customer

controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering was proven to exist.

(Neb. RS 25-21,277)

(D) The remedies provided by this section shall be deemed to be supplemental and additional to powers conferred by existing laws. The remedies provided in this section are in addition to and not in limitation of any other civil or criminal statutory or common-law remedies.

(Neb. RS 25-21,278)

Section 2. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

Passed and approved this 4th day of November 2003.

Roger C. Howe

Mayor



City Clerk

Debbie L. Gilmer