

City of Valdosta Land Development Regulations

Chapter 328 Landscape, Buffers and Screening

Article 1 Buffers and Screening

Section 328-1 Transitional Buffers

Transitional buffers shall be required between dissimilar districts or uses in accordance with the provisions of this LDR or as a condition of approval as provided in Section 242-15.

- (A) A transitional buffer shall only be required along side and rear lot lines, unless required as a condition of approval as provided in Section 242-15.
- (B) Transitional buffers required along side lot lines shall extend to a street right-of-way line unless otherwise required to observe the sight distance requirements in Section 332-3, or as authorized by a condition of zoning approval provided in Section 242-15.
- (C) All transitional buffer areas and screening shall be established in accordance with the following requirements:
 - (1) Transitional buffers shall be of such nature and density so as to screen activities, structures, and uses on the property from view from the normal level of a first story window on an abutting lot and shall further provide a year-round effective visual screen.
 - (2) Transitional buffers shall meet the minimum width requirements for dissimilar districts as shown in the "Table of Minimum Transitional Buffer Requirements" unless otherwise authorized.
 - (3) In situations where the required transitional buffer width is partially or completely contained within an existing easement, the screening requirements of this article shall be met outside of the easement area.
 - (4) Transitional buffers shall be natural, undisturbed, and free of encroachments, except as authorized by a condition of zoning, conditional use or variance approval, and shall contain the existing tree cover and vegetation, as well as any supplemental plantings or re-plantings as may be required in Section 328-3.
- (D) Transitional buffer widths may be reduced by 50% or 10 feet (whichever is less) by the addition of a solid fence or wall at least 6 feet in height, and as described in Section 328-4, unless otherwise provided in zoning district standards in Chapters 206 and 210.
- (E) The width of required transitional buffers may be reduced by Administrative Variance, in accordance with Section 242-13, by no more than 50%, as appropriate, if and only if:
 - (1) It is clearly demonstrated that existing topography and/or vegetation within the reduced area achieve the purpose and intent of this section; or
 - (2) It is clearly demonstrated that, for topographic reasons, a fence, wall and/or other screening device required herein could not possibly screen activities conducted on ground level from view from the normal level of a first-story window on any lot in a residential district abutting the use.
- (F) Principal buildings shall be located a minimum of 5 feet from any required buffer.
- (G) When a transitional buffer is required and the buffer is of greater depth than the minimum required setback, the minimum setback shall be increased to include the width of the required transitional buffer.
- (H) All transitional buffers shall be so designated on the site development plan.

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- (I) Transitional buffers shall be maintained by the property owner in perpetuity and the maintenance of same shall be reinforced by a Buffer Maintenance Agreement to be signed by the owner and recorded at the Lowndes County Courthouse.

Section 328-2 *Reserved*

Section 328-3 Supplemental Plantings in Transitional Buffers

- (A) Transitional buffers in which vegetation is non-existent or is inadequate to meet the screening requirements of this section shall be planted with supplemental plantings so as to provide a year-round effective visual screen. At a minimum Transitional Buffers must provide for the minimum planting requirements shown in the “Table of Minimum Planting Requirements for Transitional Buffers” unless otherwise authorized by the City Arborist and/or Engineering Department designee.
- (B) Supplemental plantings and re-plantings shall consist of evergreen trees, shrubs, or combination thereof, native or adaptable to the region. All trees planted shall meet the appropriate minimum size requirements listed in Section 328-24. All shrubs planted shall be a large growing species and shall be a minimum of 18” in height at time of planting.
- (C) All supplemental plantings shall be installed to allow for proper plant growth and maintenance.

Section 328-4 Non-vegetative Screening

- (A) Non-vegetative materials utilized to satisfy the screening requirements of this article, in addition to the use of existing vegetation and/or supplemental plantings may consist of walls, fences, earthen berms, or a combination thereof.
- (B) If walls or fences are to be utilized, they should be installed on the “development” side of the required vegetative screening buffer.
- (C) Walls and fences serving as non-vegetative buffer screens shall conform to the standards set forth for front yard fences and walls as described in Section 214-6. At least one-third of the cumulative length of any fences or walls utilized for screening must be planted with plant materials that will reach a minimum of 6 feet within 3 years after installation. These shall be equally distributed along entire cumulative length of fencing.
 - (1) Walls. Walls shall be of masonry construction and a minimum height of 6 feet and maximum of 8 feet, as described in Section 214-6 and it shall not obstruct access to or function of required easements.
 - (2) Fences. Fences shall be a minimum of 6 feet and maximum of 8 feet in height and constructed of standard wood or masonry fencing materials, as described in Section 214-6, which will provide at least 90% visual blockage. The fence shall not obstruct access to or function of required easements.
 - (3) Berms. Earthen berms shall have a minimum height of 4 feet and shall be constructed at a maximum slope of 3 feet of run per one foot of rise. A minimum of one small tree and 5 shrubs per 35 linear feet shall be planted along the berm to maximize opacity.

Section 328-5 Outdoor Screening

- (A) In any chapter of this LDR where reference is made requiring adequate screening of a specified operation, such screening shall be a wall or fence of solid appearance or visually opaque, continuous evergreen hedge, unless otherwise specified.

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- (B) Screening shall be as follows: For hedges, evergreen plants shall have a minimum installation height of 36", spaced 3 feet on center and be expected to reach a minimum height of 4 feet within 3 years.
- (C) Outdoor storage with a linear dimension of 15 feet or greater, any dumpster type refuse container with a linear dimension of 5 feet or greater, and outdoor servicing activities which are not screened by a building or other structure as provided in Section 218-13 shall be screened from view from street rights-of-way for the entire length of the structure or storage area, except for necessary access. Screening shall consist of either a wall or fence of solid appearance, or a visually opaque, continuous evergreen hedge at least 6 feet in height.

Section 328-6 Disturbance or Encroachments

- (A) Ditches, swales, stormwater conveyance facilities, stormwater detention ponds, sanitary sewer conveyance facilities, and any associated easements, shall not encroach into a transitional buffer unless approved by the City Arborist / Engineering Department designee. Access and utility crossings (e.g. stormwater or sanitary sewer pipes) may encroach into the transitional buffer if placed as near to perpendicular as practical.
- (B) Supplemental plantings or re-plantings of vegetation or authorized non-vegetative screening devices may encroach into a transitional buffer provided there is minimal disturbance of existing vegetation.
- (C) Land disturbance is authorized in areas of a transitional buffer that are void of significant vegetation provided that the final grade and re-plantings of vegetation meet the screening requirements contained herein.
- (D) Diseased, hazardous, dying, dead, invasive, or unsuitable trees may be removed from a buffer provided minimal disturbance occurs. Vegetation removed from a transitional buffer shall be replaced where necessary to meet the screening requirements in Section 328-1.

Section 328-7 Protection During Land Disturbing Activities

- (A) During authorized land disturbing activities, the existing vegetation within required transitional buffers shall be clearly demarcated and protected prior to commencement of, and during, construction.
- (B) The method of demarcation and protection utilized shall be in accordance with tree protection fencing as described in Section 328-20.

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Table of Minimum Transitional Buffer Requirements

New Development	Existing Development															
	E-R	R-E	R-25	R-15	R-10	R-6	R-M	R-P	O-P	C-N	C-C	C-H	C-D	C-A	M-1	M-2
E-R		15	15	15	15	15	10	10								
R-E	10															
R-25	10															
R-15	10															
R-10	10	10	10													
R-6	10	10	10	10												
R-M	10	20	20	20	20	20		10								
R-P	10	20	20	20	10	10	10									
O-P	10	20	20	20	20	20	15	10								
C-N	10	20	20	20	20											
C-C	20	20	20	20	20	20	20	20								
C-H	30	30	30	30	30	30	20	20								
C-D																
C-A	50	50	50	50	50	50	50	50	50	50	50	50	50		50	50
M-1	40	40	40	40	40	40	20	20	20	10	10	10	10			
M-2	50	50	50	50	50	50	40	40	30	20	20	10	10		10	

Notes: Width of buffers is in feet. Transitional buffer widths may be reduced by 50% or 10 feet, whichever is less, by the addition of an opaque, solid (wood or masonry) fence or wall at least 6 feet in height, as provided in Sections 328-4(1) and 328-1(c).

Table of Minimum Planting Requirements for Transitional Buffers

Planting Requirement	Buffer Width				
	10' – 15'	20'	30'	40'	50'
# of Trees per 100' linear feet*	<u>Total of 5:</u> 4 small and 1 canopy	<u>Total of 6:</u> 5 small and 1 canopy	<u>Total of 8:</u> 6 small and 2 canopy	<u>Total of 10:</u> 8 small and 2 canopy	<u>Total of 12:</u> 9 small and 3 canopy
# of Shrubs per 100' linear feet**	25	30	36	44	53

** All trees shall be of an evergreen species and shall meet minimum size requirements noted in Section 328-24.

** All shrubs shall be of an evergreen species and shall be a minimum height of 18" at time of planting

Section 328-8 through 328-10 *Reserved*

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Article 2 Tree Protection and Replacement and Landscaping

Section 328-11 Purpose and Intent

- (A) Purpose and Intent. It is the intent of this article to provide standards for the preservation and replacement of trees and vegetation as part of the land development and building construction process within the city. The city finds that the existence of adequate tree cover in the city directly affects the public health, safety and welfare of its citizens. The purpose and intent of the Mayor and City Council in enacting this article are as follows:
- (1) To protect the health, safety and general welfare of the citizens of the City of Valdosta, and to implement the policies and objectives of the comprehensive plan through the enactment of a comprehensive ordinance governing tree and vegetation preservation and replacement in the city.
 - (2) To require the preservation and replacement of trees and vegetation in certain areas within the City in order to ensure the continued health of its citizens through improved air and water quality.
 - (3) To provide developers and others active in the city with the appropriate guidance to better ensure proper tree preservation and replacement in the course of the land development process in the City.
 - (4) To preserve property values in the City by maintaining a safe, aesthetically pleasing environment.
 - (5) To reduce flooding of rivers and streams in the City by planting trees and other vegetation so as to aid in slowing the rate of stormwater runoff.
 - (6) To reduce soil erosion in the City by planting trees and other vegetation so as to aid in prevention of soil loss through stormwater runoff and flooding.
 - (7) To reduce noise and glare on adjacent properties from properties that have been extensively developed.
 - (8) To conserve energy by cooling surrounding air temperatures through the existence of adequate shade trees.
 - (9) Provide improved atmospheric quality by reducing airborne particulates and carbon monoxide and by increasing oxygen through adequate tree cover.

Section 328-12 Administration

The City Arborist and/or Engineering Department designee shall be responsible for the administration and enforcement of the provisions of this article, and for making professional judgments regarding any arboricultural principles or practices related to the implementation of this article.

Section 328-13 Applicability

The requirements of this article shall apply to the following activities and properties:

- (A) Redeveloped or substantially improved property. All property except that zoned single-family residential which is redeveloped or substantially improved to the extent that the cost thereof, excluding landscaping, exceeds 25% of the ad valorem tax value as determined by the current digest shall comply with this article, as follows:
- (1) Improvements or renovations at a cost which equals 25% of the ad valorem tax value as determined by the current digest shall comply with the landscape standards and requirements of this chapter at the rate of 25% of the total requirements.

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- (2) Improvements or renovations at a cost between 25% to 49% of the ad valorem tax value as determined by the current digest shall comply with the landscape standards and requirements of this chapter at the same ratio or percentage age as the cost of improvements relates to the total ad valorem tax value (i.e. 45% improvements of the tax digest value requires 45% compliance with the landscape standards and requirements herein).
 - (3) Improvements or renovations at a cost that equals 50% of the ad valorem tax value as established by the current tax digest or greater shall require full compliance with the landscape standards and requirements of this chapter.
 - (4) A second improvement or renovation within 12 calendar months or a previous improvement or renovation exceeds 25% of the ad valorem tax value as determined by the current digest shall require full compliance with the landscape requirements and standards of this article.
- (B) Structures that are reconstructed or rebuilt as a result of fire or natural disaster or structures which are improving their interior only shall not be required to comply with the provisions of this article, however if the existing footprint of the exterior of the structure is being altered (i.e. additions), the landscape shall be in compliance with Section 328-13(A) above if such improvements exceed 25% of the ad valorem tax value of the property.
- (C) Property hereafter annexed into the corporate limits of the City of Valdosta is subject to the following conditions:
- (1) Parcels being developed with the intent of annexation and/or receiving city services shall comply with the provisions of this ordinance.
 - (2) Annexed property developed or improved prior to the adoption of this LDR will comply with the terms and provision of the article in effect at the time of the passage of this LDR.
 - (3) Annexed property developed or improved after the adoption of this LDR shall comply with the provisions of this article.
- (D) When development is commenced and trees are removed and cleared, but no actual construction has begun within 6 months of the date of issuance of the initial permit, the owner and/or developer shall landscape the street yard within 30 days after the 6-month mark in accordance with the approved plans.
- (E) Any expansion of existing vehicular use area shall require compliance with the landscape standards of this article.
- (F) The provisions of this chapter shall not result in noncompliance with zoning or parking regulations or noncompliance with the Americans with Disabilities Act or other Federal law or the Land Development Regulations of the City of Valdosta.
- (G) The professional staff of the City shall, however, have authority to adjust requirements and standards of this chapter where the parcel is not large enough to allow full application of the tree protection, replacement, and landscape requirements of this chapter.

Section 328-14 Exemptions

The following activities and parcels are specifically exempted from this article:

- (A) Current developed and existing properties zoned single-family residential except where trees defined as city canopy trees are affected.

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- (B) The current developed and existing property zoned M-1 or M-2, except that these properties shall adhere to street yard and vehicular use area landscape requirements, shall maintain the minimum greenspace requirements and preservation of specimen and canopy trees should be considered.
- (C) Any parcel of land within the Downtown Commercial (C-D) zoning district.
- (D) Structures that are reconstructed or rebuilt as a result of fire or natural disaster. See Section 328-13(B).
- (E) Structures which are improving their interior only. See Section 328-13(B).
- (F) Tree removal by individual single-family homeowners.
- (G) Agriculture as defined in Chapter 106.
- (H) Removing trees from nurseries and botanical gardens, which are being grown for retail or wholesale.
- (I) Growing orchards of trees in active commercial operation.
- (J) Removal of diseased, damaged or infested trees upon receiving written confirmation from the City Arborist.
- (K) Timber harvesting pursuant to the provisions of O.C.G.A. 12-6-24(e) except that timber harvesting shall be governed by the applicable provisions of this chapter. Tree cutting, clearing, or clearing and grubbing projects, which result in the sale of timber, shall conform to state law regarding payment of taxes. The appropriate documentation, along with the required payment, must be submitted to the Lowndes County Tax Assessor's Office within the time frame prescribed by state law. See Section 328-28.
- (L) In the event any tree is damaged by a wind storm or any other act of God, or shall be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety and require immediate removal without delay, the same shall be removed without obtaining a permit as herein required. During any period of emergency, such as tornado, hurricane, flood, or any other act of nature, the requirements of this chapter may be waived by Mayor and Council or their designee.
- (M) The pruning or trimming of trees for beautification purposes or for removal of dead or diseased limbs shall be exempt so long as such pruning is done pursuant to the American National Standards Institute (ANSI) A300 standards and the trees are not topped in violation of Section 328-26 herein. Also, the pruning or trimming of trees, as part of normal maintenance, or public utilities maintaining lines and easements within the City shall be exempt from the provisions of this article; however, all public utilities holding easements within the City shall give notice at least 3 days in advance when pruning or trimming of easements and rights-of-ways is done. All tree trimming and pruning shall be done prudently so as to maintain the natural shape and beauty of all plants, and according to ANSI A300.

Section 328-15 Landscape Permits

No person, firm, organization, corporation, or entity shall directly or indirectly commence landscaping on any development or any construction project without first submitting a tree protection and replacement plan as provided herein and receiving a landscape permit. The landscape permit shall be part of any land disturbance, site development, and/or building permit. See Sections 302-44 or 302-46.

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- (A) All applications for a land disturbance permit, site development permit, and/or building permit pursuant to Chapter 302, Article 5, shall require submission and approval of a tree protection and replacement plan.
- (B) All tree protection and replacement plans and related documentation shall be reviewed by the City Arborist for conformance with the provisions of this article and either approved, returned for revisions, or denied within ten (10) working days after receipt. If the permit is denied, the City Arborist shall specify to the applicant, in writing the reason for denial. Should any applicant be dissatisfied with the denial of said permit or request an interpretation of this article, an appeal should be filed within 30 days with the Zoning Board of Appeals.
- (C) Signature by the City Arborist shall constitute an approval of the required tree protection and replacement plan and conformance to the provisions of this article.
- (D) The City Engineer shall not issue a land disturbance permit and the Director shall not issue a building permit unless compliance with this Chapter 328 is demonstrated: All applications for a land disturbance permit or building permit shall provide a tree protection and replacement plan and other documentation as applicable and required in this section to the City Arborist.

Section 328-16 Tree Removal Permits

Before commencing development, substantial improvements, or landscaping, including routine landscape maintenance or other landscaping activity, no person, firm, organization or corporation or other entity (i.e. landowner, landscaper, developer, general contractor or subcontractor, etc.), shall directly or indirectly remove or destroy any tree without first obtaining a permit for same. Tree removed or destroyed without a permit first being obtained must be replaced (1) pursuant to the replacement standards set forth herein in Section 328-21 as it relates to specimen or canopy trees and/or (2) to bring the property into compliance with the landscape requirements set forth in Section 328-24 herein. In addition to the replacement requirements, any person or entity violating this section shall be subject to a fine in accordance with Section 328-36.

- (A) Permits shall be obtained by making written application to the City Arborist. The application shall be submitted with a site drawing prepared to scale showing the complete tree inventory and proposed landscaping plan as well as existing and proposed finished elevations, overhead power lines, proposed building footprints, vehicular use areas, and if applicable, showing all trees to be saved and all trees to be removed. The proposed plan must be submitted to and approved by the City Arborist before the issuance of a tree removal permit. For the removal of specimen trees, see Section 328-21(D).
- (B) This section does not apply to the activities of public utilities, including those in furtherance of the provision of electricity such as the construction and maintenance of substations and power transmission lines; however, notification to the City Arborist of planned tree removal by such public utilities shall occur at least 3 days prior to any tree removal.
- (C) The tree inventory drawn to scale shall accurately locate and identify all specimen trees and all other trees with a diameter at breast height (DBH) of 6" or more. Groups of trees less than 6" DBH and not specimen or canopy trees shall be delineated as tree mass. The inventory shall indicate and designate which trees are to be removed and/or retained. (Note that existing trees 4" DBH or greater may be used to meet minimum landscape requirements as defined under this article.)
- (D) Upon receipt of the application and accompanying documents, the City Arborist shall review the same and either approve or reject said application within 10 working days of its receipt. Should any applicant be dissatisfied with the denial of said permit or request an interpretation of this article, an appeal may be filed in accordance with Section 328-35.
- (E) A copy of the tree removal permit must be displayed on site with all other construction permits, in a weather-tight container, during all phases of construction.

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Section 328-17 Tree Protection and Replacement Plan Requirements

- (A) When required by this Article, tree protection and replacement plans shall be prepared in accordance with Section 302-63.
- (B) Any changes in tree or vegetation location or the quantity or category of plant material that would result in the reduction from an approved tree protection and replacement plan, shall be submitted in written form to the Engineering Department for approval by the Department. Substitution of plant species is allowed, provided the substitution is from the same category of the approved plant material list (See Appendix A).

Section 328-18 Tree Protection and Replacement Plan Review Standards

This section establishes standards by which tree protection and replacement plans and field conditions are to be evaluated to determine compliance with the provisions of this article.

- (A) Tree protection and replacement plans shall be prepared with appropriate consideration given to the function of trees in the urban landscape. Every effort should be made to maximize the environmental benefit of the plant material.
- (B) Preservation of existing trees shall be given special consideration. The city desires to preserve existing trees whenever possible in developments. Preserved trees shall count towards the minimum landscape requirements. To be deemed a preserved tree and to comply with the minimum landscape requirements, any existing tree must be at least 4" DBH and be included among the approved species listed in Appendix A.
- (C) Trees and other planting material selected for planting must be from the approved species lists (See Appendix A), free from trunk or root injury, pests, disease, nutritional disorders or root defects, and must be of good vigor in order to assure a reasonable expectation of survivability. Any deviation from the approved species list shall require prior authorization from the City Arborist.
- (D) All trees and plants must conform to the American Standard for Nursery Stock, latest edition, published by the American Hort. Trees and plant material that does not conform may not be approved. A copy of the publication is available for review at the office of the City Arborist.
- (E) Landscaping shall be designed to consider the long-term survivability of plant material. Minimum spacing for all required plant material shall be equivalent to the mature width of the planting. Hurricane resilient tree plantings such as Live Oaks, Bald Cypress, and Magnolias should be prioritized in their use to improve the resiliency of the City of Valdosta's landscaped environment. Valdosta is known as "The Azalea City"; the use of Azaleas where appropriate is encouraged.
- (F) Required comments and standards for transplanting shall be in keeping with those established in the American National Standards Institute (ANSI) publication, "For Tree Care Operations – Tree, Shrub, and Other Woody Plant Management Standard Practices (Planting and Transplanting)" ANSI A300 (Part 6) or similar publication. Reference the latest edition of the "American Standard for Nursery Stock" published by American Hort for plant material quality specifications.

Section 328-19 Landscaping and Tree Replacement Standards

To ensure the attainment of the objectives of this article, the design and installation of required landscaping and replacement of trees shall be consistent with the following standards unless it can be demonstrated to the satisfaction of the City Arborist and/or Engineering Department designee that alternative design, replacement and installation plans will meet the spirit and intent of this article.

(A) General Requirements.

- (1) Line of Sight. All landscaping shall be in compliance with the City's minimum line of site standards and sight distance triangles for streets, intersections, and driveways as required by

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Chapter 332, Article 1. No landscaping plant materials shall obstruct or impede the traffic flow on any public right of way or pedestrian walkways.

- (2) **Plant Protection.** All planting in areas which are adjacent to vehicular use area or outdoor storage areas shall be protected from vehicular encroachment by construction of curbing or other appropriate barriers.
- (3) **Erosion Control.** Surface water on all planting areas shall be stabilized to prevent erosion by the use of live ground cover, mulches, shrubs, permeable pedestrian paver blocks, or any combination thereof.
- (4) **Overhead Utility Lines.** The location of all overhead utilities shall be considered during the placement of required trees in accordance with the following standards:
 - (a) Any tree with a mature planting height (as indicated in Appendix A) not exceeding 20 feet may be planted directly beneath or nearby to overhead utility lines.
 - (b) Any tree with a mature planting height (as indicated in Appendix A) in excess of 20 feet shall be installed set back from the nearest overhead utility lines. The required setback distance shall be calculated to be the mature height of the planting (as indicated in Appendix A) minus 20 feet.
- (5) **Fire Equipment.** A minimum 5-foot radius shall be maintained around all fire protection equipment, including fire hydrants, and shall contain no plant materials or structural elements other than ground cover plants.
- (6) **Minimum Root Zones.** In order to provide sufficient growing area for planted trees within tree islands, the minimum root zone of 150 square feet is required for all trees.
- (7) **Size of Planting Beds.** The length of all planting beds shall not exceed two and one-half times their width.
- (8) **Minimum Planting Area per Tree.** Trees shall have no less than 150 square feet of planting area surrounding their bases. These areas shall be maintained in either vegetative landscape material or other pervious cover.
- (9) **Planting Sites.** Planting sites must have at least 6" of clearance of good top soil, including 6" around and below the root ball of all trees. During planting the City Arborist may require that unsuitable soil be removed and replaced with top soil.
- (10) **Root Barriers.** Prior to the installation of trees, a determination shall be made as to whether root barriers are necessary to prevent roots from uplifting or cracking sidewalks.

(B) Tree Planting Guidelines.

- (1) Always pick a tree up by the container or root ball, never by the trunk.
- (2) Remove all tree wrap, burlap, wire baskets, ties or other binding devices from the tree before planting.
- (3) The hole shall be a minimum of two (2) times the width of the root ball with sloped sides.
- (4) The depth of the hole should be no deeper than the height between the bottom of the root ball and the trunk flare.
- (5) Backfill soil must be watered and all air pockets removed and filled with clean dirt.
- (6) Stake the tree only if necessary.
- (7) All requirements of the planting comments and planting detail will be followed.

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Section 328-20 Tree Protection Standards

- (A) Tree protection fences are necessary to eliminate activities detrimental to trees including but not limited to:
- (1) Soil compaction in the critical root zone from heavy equipment, vehicular or excessive pedestrian traffic, or storage of equipment or materials.
 - (2) Root disturbance due to cuts, fills or trenching.
 - (3) Wounds to exposed roots, trunks or limbs.
 - (4) Other activities such as chemical storage, cement truck cleaning, fire, etc.
- (B) Location and Types of Tree Protection Fencing. Tree protection fences are to be installed as shown on the tree protection and replacement plan and shall be located at the critical root zone of all exceptional trees to be preserved. Once tree protection areas are established and approved, any changes to such areas are subject to review and approval by the City Arborist. Prior to commencement of tree removal and/or site disturbance, a request to the City Arborist for a Vegetation Protection Inspection shall be made per Section 328-33(C)(2).
- (C) Materials.
- (1) Active tree protection shall be in all work zone areas. Active tree protection shall consist of chain link, orange laminated plastic, wooden post and/or rail fencing.
 - (2) Passive tree protection shall be used in the areas adjacent to, but not part of the work zone. Passive protection shall consist of heavy grade plastic flagging, a minimum of 4" wide with dark lettering on bright background reading "Tree Protection Area – Do Not Enter."
- (D) Sequence of Installation and Removal. All tree protection fencing shall be installed prior to the commencement of any land disturbing activity. The City Arborist shall inspect the installation of protection control devices before a land disturbance permit is issued. It shall be the joint and several responsibility of the property owner, developer, contractor, and builder, as applicable, to ensure that all tree protection fencing remains in place during all phases of development.
- (E) Other Specifications.
- (1) Clearing. Where the clearing of trees has been approved, trees shall be removed in a manner that does not adversely impact the trees to be preserved. No trees shall be felled into tree protection areas and no roots shall be disturbed inside the tree protection areas.
 - (2) Erosion and Sedimentation Control. All erosion and sedimentation control measures shall be installed uphill so that sediment will not reach any tree protection fencing.
 - (3) Signage. All tree protection areas shall be designated as such with "Tree Save Area" signs posted visibly on all sides of the fenced-in area during construction. These signs are intended to inform subcontractors of the tree protection process.
 - (4) Tunneling. All boring under the tree protection zone shall be a minimum of 36" deep on center and shall begin before the critical root zone and end beyond the critical root zone or drip line, whichever is greater.
 - (5) Trenching. All trenching shall meet the following specifications:
 - (a) All crushed or torn roots shall be cleaved back to good wood and a sharp clean cut made to promote re-growth.
 - (b) All work in the area and foot traffic should be on the farthest side of the trench away from trees.
 - (c) All exposed root ends shall be kept moist.

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- (d) If trenching causes the death of a tree to be preserved, the tree shall be replaced prior to occupancy according to the standards of this ordinance.
- (6) Pruning. The following tree pruning is in accordance with the American National Standards Institute (ANSI) A300 (Part 1) Tree Care Operations (Pruning) for trees, shrubs, and other woody plant maintenance.
 - (a) All pruning shall start beyond the branch collar of the tree.
 - (b) Pruning shall be done so as to remove branch weight as much as possible before final cut to prevent tearing of bark and cambium.
 - (c) In all pruning, the branch collar, part of the trunk, shall remain intact and uninjured.
- (7) Safety. All tree care operations shall comply with the American National Standards Institute (ANSI) Z133 Safety Requirements for arboricultural operations, which includes pruning, trimming, repairing, maintaining, removing trees and cutting brush.

Section 328-21 Treatment of Specimen and Canopy Trees

- (A) Preservation of Specimen and Canopy Trees. Preservation of specimen and canopy trees shall be given special consideration in the preparation of site development plans. It is the desire of the city to preserve all existing trees wherever possible in development. Preserved specimen and canopy trees may be used in minimum landscape or buffer requirements in accordance with values found in Appendix A – Sections 1 and 2. Any preserved specimen tree greater than 30" DBH shall receive an inch for inch credit. All replacement trees shall be planted in accordance with size standards set forth in this ordinance. Appendix A – Sections 1 and 2 for replacement value.
- (B) Identification of Specimen and Canopy Trees
 - (1) Canopy trees are large trees or groups of trees that have a distinct presence in the landscape. For the purpose of this article, all large trees and medium trees identified as canopy trees are listed in Appendix A – Sections 2 and 3.
 - (2) Specimen trees are those trees which warrant special consideration and encouragement for preservation. Specimen trees may be designated for preservation because of rarity, aesthetic value, historical value, botanical importance, and importance to overall community planning or size. The size or condition of trees will be evaluated by the City Arborist to determine if they qualify as specimen trees based upon the following criteria.
 - (a) Size Criteria.
 - i. All canopy trees: 16" DBH or larger
 - ii. Longleaf and Spruce Pine: 10" DBH or larger
 - iii. Live Oak and Magnolia grandiflora: 14" DBH or larger
 - iv. Small species: 6" DBH or larger
 - (b) Condition Criteria. All trees must be relatively sound and have a solid trunk. No major insect or pathological problems. Trees which face imminent death within two (2) years based upon the judgment of the City Arborist may be disqualified as specimen trees.
- (C) Removal Permit
 - (1) Permits for removal of specimen or canopy trees shall be obtained by making written application on the form prescribed by Mayor and Council to the City Arborist. See Section 328-21.

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- (2) Where application is made for removal of a canopy or specimen tree, a plan or written documentation indicating the reason for the removal must be submitted with the application and approved by the City Arborist.

(D) Removal and Replacement Standards.

- (1) Where application is made for removal of a canopy or specimen tree, the replacement value of specimen trees will be in accordance with the species values stated in Appendix A – Sections 1 and 2.
- (2) Replacement trees shall be planted on site, if the site can accommodate trees above the required minimum specifications. In the event replacement trees cannot be planted on site, the canopy and specimen trees will be valued and funds placed in the Tree Bank (See Section 328-30).
- (3) Where payment to the Tree Bank is required under paragraph (2) above, the developer may plant trees larger than the minimum requirement and shall be entitled to a Tree Bank credit of \$50.00 per inch above the minimum inch requirements.
- (4) Removal of specimen trees from property currently not being developed also has replacement requirements. Replacement canopy trees shall have a minimum 2.5" basal caliper, and small trees shall have a minimum basal caliper of 2". All removed trees that cannot be replanted on site shall be valued in accordance with the species values stated in Appendix A – Sections 1 and 2. Example: A Live Oak has a value of 3. Removal of this tree would require planting three (3), 2.5" basal caliper trees. See Section 328-21(D)(5) below.
- (5) Specimen trees must be replaced by the same species or a species having the potential for comparable size, quality, and longevity.
- (6) No specimen tree or canopy tree which overhangs any public right of way shall be removed without first obtaining a tree removal permit.
- (7) Trees planted to meet the minimum landscape requirements may have a larger caliper than the minimum requirements. Each inch of additional caliper above the minimum requirements may be used toward the requirements of specimen and/or canopy trees.

Section 328-22 Required Greenspace Areas

- (A) All properties subject to the provisions of Section 328-13 shall be developed with a minimum of 15% of the total area developed as greenspace, meeting the development standards of Section 328-22(D).
- (B) The street yard, side yard, rear yard, wetlands, surface water retention and/or detention areas and parking islands may be used to satisfy the greenspace requirements, provided these areas meet the landscape requirements.
- (C) Required greenspace areas in residential subdivisions must be landscaped before the time of final platting.
- (D) Greenspace Development Standards.
 - (1) The minimum area to be designated greenspace is 150 square feet and the minimum width of any area shall be 8 feet for interior vehicular use area islands only. For rear and side yards, minimum size requirements shall be 100 square feet with a minimum width of 3 feet.
 - (2) Trees required to be planted in the greenspace must meet minimum size requirements.

Section 328-23 Requirements for Residential Subdivisions

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- (A) All residential subdivisions are required to have a landscaped street yard at the primary street entrance to the development. If there is more than one entrance, the developer shall designate the primary entrance. The street yard shall be landscaped the entire length of the parent parcel lot line fronting on a public street at a minimum width of 10 feet. The street yard shall be fully contained upon a separate parcel under distinct perpetual ownership by an individual or HOA. The street entrance must be landscaped with a minimum of 3 trees and 20 shrubs per 75 linear feet. A combination of grass, mulch, or ground cover for bare areas shall be required. The width of the street entrance is measured from the right of way to the nearest impervious area. Existing trees that exceed 4" DBH can be used to meet minimum plant requirements. Specimen trees provide a credit based upon values stated in Appendix A – Sections 1 and 2 toward the landscape requirement.
- (B) All residential subdivision developments must comply with any applicable transitional buffer requirements found in Article 1 of this Chapter.
- (C) The specimen tree provisions of this ordinance shall apply to residential subdivisions for the street yard only.
- (D) No final inspection shall be performed for any residential structure until the minimum landscape requirements have been met.
- (E) In all residential subdivision developments of 50 or more lots, greenspace shall be provided by the developer at a rate of 200 square feet per lot. Required green space area may be consolidated and provided upon one parcel, or it may be dispersed evenly throughout the subdivision upon numerous parcels. The required green space shall be fully contained upon a separate parcel or parcels under distinct perpetual ownership by an individual or HOA. The required green space parcels shall comply with all applicable zoning regulations governing minimum lot area and depth.
- (F) Upon obtaining the written consent from the City Arborist, the residential subdivision developer may, before or at the time 50% of the total number of lots have been sold, substitute a different lot within the subdivision as the designated greenspace lot, provided the substituted lot sacrifices the minimum square footage and landscape requirements set forth in this section. Upon substitution of the greenspace, a revised plat shall be prepared and recorded, along with any other documents necessary to effect such change at the expense of the developer.

Section 328-24 Landscape Requirements

(A) Tree Shrub and Ground Cover Selection and Minimum Size Requirements.

- (1) All medium and large trees must be at least 2.5" basal caliper, at least 8 feet in height, and standard single trunk specimen. If container grown trees are used, they must be a minimum of 25-gallon size. If field-grown trees are used, sufficient root mass must be preserved to guarantee survival of trees.
- (2) All small trees planted must be at least 2" basal caliper, at least 6 feet in height, standard single trunk specimen, and a minimum 15-gallon container for container trees at the time of planting.
- (3) Shrubs included in interior planting areas with a spreading growth habit must be a minimum of 12" in height at the time of installation. Shrub species that have an upright growth habit must be at least 18" tall at the time of installation. At least 60% of the shrubs must be 3-gallon containers or larger. Shrubs shall be locally adapted species and shall be spaced according to growth habit. Not more than 30% of the shrubs shall be deciduous species.
- (4) Ground cover other than grass shall be placed 18" on center.
- (5) Ornamental grasses shall be a minimum of 12" tall at planting.

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- (6) If the required number of trees cannot be planted on site, the caliper inch may be increased per tree to reduce the number of trees, but still achieve the same number of required caliper inches.

(B) Interior Vehicular Use Area Minimum Landscape Requirements. Landscaped area shall be provided within parking areas (but not within vehicle storage, maneuvering, or display areas) as follows:

- (1) One (1) tree; 5 shrubs, and a combination of ground cover, grass or mulch to cover barren areas for every 2,100 square feet of vehicular use areas or greater fraction thereof. All trees and shrub plantings may be spaced in any pattern so long as no parking space is located more than 50 feet from the base of any tree. The street yard or exterior canopy trees may be included when calculating the 50-foot requirement for location of canopy trees.
- (2) A variance from the 50 foot spacing requirement for loading dock areas or heavy truck traffic areas and/or car display areas may be granted upon approval by the City Arborist and/or Engineering Department designee.
- (3) Landscape areas shall be located in such a manner as to divide and break up the parking area. A planting area located wholly within a generally rectangular area that is (a) devoted to parking and (b) between a building and a lot line or between two (2) buildings, will generally serve this purpose.
- (4) All landscape areas shall contain a minimum of 150 square feet.
- (5) Adequate irrigation to the landscape areas shall be provided. The method of irrigation shall be indicated on the tree protection and replacement plan.
- (6) Light posts and underground utilities may be located in landscape islands.
- (7) Combination drainage swale/planting strips for parking lots are encouraged provided that:
 - (a) Adequate drainage is provided for the trees; and
 - (b) Bottomland hardwood species are used.
- (8) A minimum of 60% of all trees planted in the interior vehicular use areas shall be canopy trees. Canopy trees are identified in Appendix A –Section 2 and shall consist of all large trees and designated medium trees. All trees shall have a minimum planting area as described in Section 328-19. If canopy trees cannot be planted due to overhead utility lines or if the site cannot accommodate additional canopy trees due to existing canopy trees (i.e. current growth form), small trees shall be planted to equal the same number of required caliper inches.
- (9) If the required number of trees cannot be planted on site, the caliper inch may be increased per tree to reduce the number of trees, but still achieve the required number of caliper inches.

(C) Perimeter Area Minimum Landscape Requirements.

- (1) Street Yards. A landscaped street yard shall be required adjacent to all street rights-of-way.
 - (a) For property having more than one street front, a primary street yard shall be designated by the developer.
 - (b) The primary street yard shall be landscaped to the full requirements of this article. The remaining street yard(s) shall meet the primary street yard landscape planting requirements at 75%.
 - (c) The width of all street yards is measured from the right-of-way line to the edge of the nearest impervious area.
 - (d) A minimum of 3 trees and 20 shrubs and a combination of grass, mulch or other ground cover to cover barren area shall be required every 75 linear feet or primary street yard. All other street yards shall be planted with a minimum of 2 trees, 20 shrubs and a

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combination of grass, mulch or other ground cover to cover barren area for every 75 linear feet. For property having less than 75 feet of street yard, a minimum of 3 trees and 20 shrubs shall be required.

- (e) For all parcels developed greater than 1.1 acres, the primary street yard shall have a minimum width of 10 feet. All other street yards shall have a minimum width of 6 feet.
 - (f) For parcels equal to or less than 1.1 acres, all street yards shall have a minimum width of 6 feet.
 - (g) For all parcels greater than 1.1 acres, a minimum of 60% of all trees planted shall be large canopy trees whose growth form will provide shade.
 - (h) For parcels equal to or less than 1.1 acres, the total site shall contain 60% large canopy trees, but the percentage may be reduced for the street yard provided it does not reduce the required number of large canopy trees on site.
 - (i) All outparcels shall have the same minimum width on the street yard as the main parcels.
 - (j) All walkways constructed of impervious material shall be no less than 4 feet from the trunk of any existing tree. The minimum distance shall be increased to 8 feet if the existing tree is a specimen tree.
 - (k) If the required number of trees cannot be planted on site, the caliper inch may be increased per tree to reduce the number of trees, but still achieve the same number of required caliper inches.
- (2) Side and Rear Yards.
- (a) For all parcels developed greater than 1.1 acres, the side and rear yard areas shall have a minimum width of 5 feet. Width is measured from lot line to the nearest impervious area. A minimum of one (1) tree and a combination of ground cover shall be required in every 50 linear feet or greater fraction thereof on side and rear yards. Grouping trees together in clumps is preferred but not required. Side or rear yard areas may be used to meet the 15% greenspace requirements or buffer, as long as compliance with the minimum side or rear yard landscape standards are met.
 - (b) For parcels equal to or less than 1.1 acres, the side and rear yards shall have a minimum width of 3 feet. A minimum of one (1) tree every 50 feet or greater fraction thereof is required. The width is measured from the property line to the nearest impervious area. Grouping trees together in clumps is preferred but not required.
 - (c) For property zoned so as to provide for zero lot lines, the side yard minimum is not required for the area of the building only. Zero lot lines shall not change the side yard calculations for plant material requirements. Developments with zero lot lines shall also comply with the requirement that 15% of the total area be greenspace.
 - (d) A minimum of 60% of all trees planted in side and rear yard areas shall be canopy trees. Canopy trees are identified in Appendix A – Section 2 and consist of all large trees and designated medium trees. All trees have a minimum planting area described in the Landscaping and Tree Replacement Standards – See Section 328-19.
 - (e) If the required number of trees cannot be planted on site, the caliper inches may be increased per tree to reduce the number of trees, but still achieve the same number of required caliper inches.

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Section 328-25 Surface Water Retention and Drainage Basins

Surface water retention and detention basins designed to handle surface water runoff and overflow are recommended to be constructed with a natural appearance. Trees specified to be planted below the high watermark of a retention pond shall be suitable for wet conditions. Trees should be located so as to integrate into the surrounding landscape.

Section 328-26 Tree Topping

No tree topping or roundovering shall be allowed on new and existing developments, city rights-of-way, city lands, or non-residential properties. Trees which have been topped as defined in Section 106-1 ("Definitions") must be replaced with the replacement trees pursuant to the replacement requirements referenced in Section 328-16 herein.

Section 328-27 Remedial Care of Trees and Tree Save Areas

Trees in tree save areas that have been adversely impacted, as determined by the City Arborist, by the construction process may be subject to remedial care. Remedial care may include but is not limited to: pruning, soil aeration, fertilization, or supplemental watering.

Section 328-28 Timber Harvesting

- (A) The following practices are required of all timber harvesting operations:
 - (1) All access onto public roads shall have culverts and stone pads as prescribed in Manual of Standards and Specifications for Control of Soil, Erosion and Sediment.
 - (2) Stream sides and access roads shall be seeded upon completion of harvesting operations as prescribed in the Manual of Standards and Specifications for Control of Soil, Erosion and Sediment.
 - (3) It is recommended that tall timber harvesting operations follow the Recommended BMPs for Forestry in Georgia (available from state forestry commission).
- (B) Timber harvesting operations supervised by the soil conservation service, state forestry commission, or in conjunction with an approved sedimentation and erosion control plan are exempt from paragraphs (B)(2) and (3) of this Section.
- (C) Any person violating any provision of this section shall be punished pursuant to Chapter 110 and other applicable provisions of the LDR.

Section 328-29 Tree Bank

There is hereby established by the City of Valdosta a separate fund to be known and designated as the Tree Bank Fund. Funds herein provided shall be accumulated in said fund and used for the planting and installation of trees on public property, parks, and other approved property within the City. All projects for planting shall be approved by the Valdosta Tree Commission.

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Section 328-30 Alternative Compliance

- (A) Where the minimum requirements of this Article cannot be fully met because the site cannot support the required density of trees, the applicant shall make a contribution to the City of Valdosta Tree Bank Fund (See Section 328-29). Contributions to the tree replacement fund shall be paid in full prior to the issuance of any required permit. Such contributions shall be used for the sole purposes of planting and maintaining trees on public property.
- (B) The amount of the contribution shall be \$125 per caliper inch DBH.
- (C) The City Arborist may waive the provisions of this section if he determines that:
 - (1) The unmet density is less than 10% of the density requirement for the site; and
 - (2) The developer otherwise substantially complies with the provisions of this article.

Section 328-31 Maintenance Period

- (A) New tree plantings or existing protected trees used to meet the density requirements of this article shall be maintained for 5 years after the date of final inspection. The owner of the property shall be responsible for continuing maintenance.
- (B) During the 5-year maintenance period, the City Arborist and/or Engineering Department designee shall have the right to conduct yearly inspections to ensure continuing compliance with the Tree Protection and Replacement Plan and to confirm the health and viability of all required trees and plant material.
- (C) If the City Arborist finds that trees planted or protected to meet the required site density are missing, dead or near death, the City Arborist shall so notify the property owner and the property shall replace those trees with trees of similar size within 30 days of notification.

Section 328-32 Inspections

- (A) The City Arborist and/or Engineering Department designee may periodically inspect the project during the course thereof and shall make a final inspection following the completion of work. Applicants shall cooperate with the City Arborist and/or Engineering Department designee in making such inspections. The City Arborist and/or Engineering Department designee shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this article, and for the purpose of entering at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activities.
- (B) No person shall refuse entry or access to any authorized City of Valdosta employee who requests entry for the purpose of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
- (C) The following inspections shall be conducted in conjunction with all development activities regulated under this Article.
 - (1) Initial Inspections. An inspection by the City Arborist and/or Engineering Department designee shall be conducted prior to approval of any permit application.
 - (2) Vegetation Protection Inspection. An inspection by the City Arborist and/or Engineering Department designee shall be conducted to ensure proper installation of tree and vegetation protection devices before tree removal and/or site disturbance. See Section 328-20.

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- (3) **Periodic Inspection.** An inspection by the City Arborist and/or Engineering Department designee shall be conducted to ensure compliance is continued throughout the project.
- (4) **Final Inspection. Notice of Completion and Certificate of Occupancy.** This inspection shall occur when all development activities permitted for the site have been completed. No certificate of occupancy shall be issued, nor any building or premises occupied, unless and until final inspection reveals that all work has been installed in accordance with the approved permit and tree protection or removal activity has been carried out according to the approved permit and plan.
- (5) **Temporary Certificate of Occupancy.** In the event that there is a delay in complying with the approved permits and plans by final inspection, a temporary certificate of occupancy may be issued, provided that such uncompleted improvements are satisfactorily installed within a reasonable length of time as specified by the City Arborist, not to exceed 3 months. After improvements are completed and approved, a permanent certificate of occupancy will be issued after a final inspection by the Engineering Department.

Section 328-34 Notice of Violations and Stop-work Orders

- (A) **Suspension, Revocation, and Modification.** Any City issued permit may be suspended, revoked or modified by the Department upon finding that the holder is in violation of the terms of the permit or any portion of this article.
- (B) **Notification of Violations.** Where it is determined that a violation of this chapter has occurred, the City Arborist and/or Engineering Department designee shall give written notice of the violation to the occupant, applicant, and or the owner shown on the most recent tax roll of the City. Said written notice shall include, but not be limited to:
 - (1) A description of the location of the property involved, either by street address or by legal description.
 - (2) A statement indicating the nature of the violations.
 - (3) A statement showing the time within which all necessary remedial action must be accompanied which time may not be less than 10 days nor more than 30 days from the date of said written notice.
 - (4) The name of the person(s) upon whom the notice of violation is served.
 - (5) A statement advising that upon failure to comply with the requirements of the notice the City Arborist and/or City Marshal shall take such enforcement procedures as may be required under this notice.
 - (6) Written notice required above shall be served upon the person violating this ordinance and the person owning this land by either personal delivery or Certified mail.
- (C) **Stop Work Orders; Warranting Circumstances.** The City Engineer and/or their designee upon the recommendation and advice of the City Arborist can issue a Stop Work Order in any of the following circumstances:
 - (1) When development is being implemented without approved permits.
 - (2) When ongoing non-complying work is not immediately and permanently stopped upon receipt of a written or oral Notice of Violation.
 - (3) Upon failure to post all required and approved permits under this article.
- (D) **Failure to Comply After Notice of Violation or Stop Work Order.** Where work or development continues after issuance of a stop work order, the City Engineer and/or their designee may initiate any appropriate act or legal action authorized by law.

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- (E) Notice of Compliance. Upon satisfactory completion of corrective action required by a notice of violation or stop work order, the City Engineer and/or their designee shall issue a notice of compliance and allow the work to continue.

Section 328-35 Appeals

Any person aggrieved by a final decision of the City Arborist or any other administrative official made pursuant to the provisions of this article may appeal that determination to the Zoning Board of Appeals in accordance with the procedures set forth in LDR Section 242-8. Appeals from final decisions of the Zoning Board of Appeals shall be as provided in LDR Section 242-12.

Section 328-36 Violations and Penalties

Any person, firm, corporation or agent, including a landscaper and/or landscape company, who shall violate any of the aforementioned provisions contained in Chapter 328 of the LDR shall be tried in the Municipal Court of the City of Valdosta. Property owners are ultimately responsible for any violations that occur on their property and can be cited and fined for any violations as set forth herein. If a violator is found guilty, fines shall be as follows:

First Offense within the past 12 months:	\$ 250.00
Second Offense within the past 12 months:	\$ 500.00
Third or Subsequent Offenses in the past 12 months:	\$ 1,000.00

For crepe myrtle topping ONLY, one warning will be issued to the violator for the first violation, then all subsequent violations will be treated as listed above for the First, Second, Third or Subsequent Offenses. A violator will only receive one warning, regardless of the months or years that have passed between the warning and the next violation. All other non-topping violations involving crepe myrtles will be subject to the procedures set forth in this Chapter.

Violations include, but are not limited to:

- (A) It shall be unlawful for any person or entity to top, remove or destroy a tree without first obtaining a permit where applicable. The topping, removal or destruction of each tree shall constitute a separate offense under this article.
- (B) It shall be unlawful for any person or entity to commence construction or development without first obtaining a land disturbance permit, and/or tree removal permit, where applicable. Each day said development or construction continues without obtaining a permit shall constitute a separate offense.
- (C) It shall be unlawful for any person or entity to fail to protect and preserve trees designated for preservation during development. Each day said failure to protect said designated trees continues shall constitute a separate offense.
- (D) It shall be unlawful for any person or entity to fail to replace any dead plants or trees as stated in the written notice to replace said plants or trees. Each day that said party fails to replace said dead plants or trees after said notice shall constitute a separate offense.