



## Board Summary Report

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**File #:** 24-409

**Agenda Date:** 7/29/2024

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**To:** Board of County Commissioners

**Through:** Bryan Weimer, Director, Public Works & Development

**Prepared By:**

Jason Reynolds, Planning Division Manager, PWD

**Presenter:** Jason Reynolds, Planning Division Manager, PWD

**Subject:**

2:15 PM \*Proposition 122 Natural Medicine Implementation

**Purpose and Request:**

This study session discusses alternatives for the implementation of Proposition 122 (Natural Medicine) in Arapahoe County. Staff is seeking Board direction on several potential regulatory alternatives, which will be described in more detail below.

**Background and Discussion:** In November 2022, Colorado voters approved Proposition 122, which legalized the supervised use of “natural medicine” at state-licensed facilities and decriminalized the use of certain plants or fungi for people 21 years of age and older. “Natural medicine” includes psilocyn and psilocybin until 2026 and may later include other psychedelics such as ibogaine, DMT (dimethyltryptamine), or mescaline if approved by the Colorado Department of Revenue. Unlike Amendment 64, which allowed retail marijuana in Colorado, Proposition 122 does not allow local jurisdictions to ban natural medicine facilities like they could with medical and recreational dispensaries or marijuana grows/production facilities.

In May 2023, the Governor signed Senate Bill 23-290 concerning natural medicine, which provided a framework for developing natural medicine regulations in Colorado.

Following the adoption of Senate Bill 23-290, two state agencies were tasked with rulemaking: Department of Regulatory Agencies (DORA) and the Department of Revenue (DOR). DORA regulates and licenses

facilitators of natural medicine services and DOR will license and regulate natural medicine businesses, their owners, and employees. DOR's final draft rules will be published on July 18, 2024, and their final rulemaking hearing will be on July 25, 2024. Copies of Proposition 122 and SB 23-290 are linked under attachments.

Senate Bill 23-290 elaborates on Proposition 122's local preemption:

**12-170-112. Local Jurisdiction.** (1) A local jurisdiction shall not prohibit a facilitator from providing natural medicine services within its boundaries if the individual is a licensed facilitator pursuant to this Article 170.

(2) A local jurisdiction shall not adopt ordinances or regulations that are unreasonable or in conflict with this article 170.

**12-170-115. Preemption.** A local jurisdiction shall not adopt, enact, or enforce any ordinance, rule, or resolution that is otherwise in conflict with the provisions of this Article 170.

Local jurisdictions may regulate the time, manner and place of natural medicine facilities as long as they are not unreasonable and do not conflict with the statute. This includes the ability to confine the uses to certain zoning districts and under CRS 44-50-302(1)(c), enacted with SB 23-290, compliance with local zoning is required.

#### State Requirements for Natural Medicine Businesses

On or before December 31, 2024, the state licensing authority must begin granting or refusing state licenses for cultivation, manufacturing, testing, etc. Senate Bill 23-290 created four classes of natural medicine business licenses:

**Natural Medicine Healing Center:** provides on-site natural medicine services through a licensed facilitator to participants 21 years of age or older.

**Natural Medicine Cultivation Center:** cultivates natural medicine for transfer and distribution to natural medicine healing centers, natural medicine product manufacturers, or other natural medicine cultivation centers (Senate Bill 23-290 also clarified that natural medicine is not a farm product).

**Natural Medicine Product Manufacturer:** manufactures regulated natural medicine products (following state statute and state rules); may be combined with a cultivation center.

**Natural Medicine Testing Facility:** performs testing and research on natural medicine.

In considering alternatives for implementing Proposition 122 as implemented through SB23-290, staff recommends that Arapahoe County consider reasonable time place and manner regulations, including

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consideration of appropriate zoning districts for such uses for these four use categories and adopt regulations by the end of 2024 so they are in place when the state begins issuing licenses.

Section 44-50-302, CRS, requires all natural medicine businesses to be located at least 1,000 feet from a child care center; preschool; elementary, middle, junior, or high school; or a residential child care facility. The distance is calculated using a route of direct pedestrian access, and not a radius from the facility (44-50-302(d) (II) C.R.S.). The statute allows local governments to vary these distance restrictions, which could include reducing the required buffer or eliminating one or more of the types of schools or facilities from the distance restriction. Some communities, such as Castle Rock and Parker, have drafted regulations that also require natural medicine businesses to be located at least 1,000 feet from all residential uses.

### Cultivation for Personal Use

Finally, Senate Bill 23-290 addresses private grows when describing various offenses relating to natural medicine and natural medicine product (18-18-434 C.R.S.). That section of the bill creates a drug petty offense if a person knowingly cultivates natural medicine in a cumulative area larger than 12 feet by 12 feet. The cultivation area must be within an enclosed and locked space (which can be a residence or a locked room within a residence if a person under 21 years of age lives at the residence). Local jurisdictions may expressly permit larger cultivation areas on private property, but the statute does not expressly allow reducing the cultivation areas.

### Types of Facilities

This section provides more detail on the types of facilities, as well as which Arapahoe County zone districts might allow each type of use.

Natural medicine cultivation center - these state-licensed facilities cultivate the medicine for distribution to other facilities. This use would most resemble indoor agriculture and would resemble uses found in Arapahoe County's light or heavy industrial zones.

Natural Medicine product manufacturer - these state-licensed facilities create products infused with natural medicine that are intended for consumption (examples could include tinctures, capsules, food products, etc.). This use would be similar to commercial kitchens or food manufacturers and would resemble light manufacturing, which can be allowed in Arapahoe County's light or heavy industrial zones as well as B-4 Specialty Commercial.

Natural Medicine Testing Facilities - these state-licensed facilities test and verify chemical composition in natural medicine and natural medicine products. This use is most similar to a laboratory, which can be allowed in most of Arapahoe County's business and industrial zone districts.

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Natural Medicine Healing Center - this is a site where patients arrive and are provided natural medicine as part of a session with a trained/state-licensed facilitator. The typical session lasts 4-6 hours and patients are not permitted to leave the center before the medicine has worn off. All medicine is administered on-site and is typically one-on-one or in small groups of up to 10 people. This use is most similar to a medical or professional office, which could be allowed in all of Arapahoe County's business and industrial zone districts.

**Fiscal Impact:** No direct fiscal impact.

**Alternatives:** Staff seeks general guidance on implementing natural medicine in unincorporated Arapahoe County, as well as specific guidance on certain options.

Rely on Code Interpretation or Codify Natural Medicine Rules: As discussed above, natural medicine uses could fit within existing zone district categories and it would be possible to implement Proposition 122 by interpreting the Land Development Code while relying on state buffers and home cultivation requirements. However, staff recommends adding some definitions and clarifications to our code; this would ensure consistency and clarity in our implementation.

Allowable Zone Districts: The discussion section described some of the zone districts where natural medicine businesses could be allowed. Staff recommends allowing natural medicine businesses in the following zone districts:

Natural medicine cultivation center: I-1 light industrial and I-2 heavy industrial and PUD zones allowing light manufacturing; clarify that because natural medicine is not considered a crop, cultivation is not allowed in agricultural zone districts.

Natural medicine product manufacturer: I-1 light industrial, I-2 heavy industrial, B-4 specialty commercial, and PUD zone districts where light manufacturing is allowed.

Natural medicine testing facilities: B-3 neighborhood and community business, B-4 specialty commercial, B-5 regional commercial, I-1 light industrial, I-2 heavy industrial, and PUD zones where laboratories are allowed.

Natural medicine healing centers: B-1 administrative and professional offices, B-3 neighborhood and community business, B-4 specialty commercial, B-5 regional commercial, I-1 light industrial, I-2 heavy industrial, and PUD zones where office uses are allowed. This section could also clarify that operating a healing center as a home occupation is prohibited.

State Buffer Requirements: As noted above, statute allows local jurisdictions to modify the required 1,000-foot

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buffer from child care centers and schools. Staff recommends no modifications to the state buffer requirements.

Hours of Operation: Statute does not provide guidance for hours of operation. Cultivation, product manufacturing, and testing facilities are not open to the public and would generate minimal traffic; and cultivation may require 24-hour access to the product. Staff does not recommend any restrictions on hours of operation for those facilities.

During Denver’s Natural Medicine Work Group discussions, participants encouraged Denver to allow generous operating hours for natural medicine healing centers in order to accommodate patients with varied work schedules. Given that healing center treatment is an on-site process proposed for commercial and industrial zone districts, staff does not recommend any restrictions on hours of operation.

If the Board would like to consider limiting hours of operation for natural medicine healing centers, the Land Development Code defines a 24-hour use as any use seeking hours of operation in excess of 18 hours in a 24-hour period. The code could prohibit 24-hour operation and allow healing center businesses to set the hours that work for their patients. Alternatively, the limits could specify hours of the day; for example, Denver prohibits massage businesses from operating 11 pm to 5 am and marijuana stores from being open 12 am to 8 am.

Private Cultivation: Codify state law (12 feet by 12 feet maximum) or increase the allowable cultivation area?

Staff recommends considering regulations that would limit private cultivation areas to 12 feet by 12 feet, matching the state requirement. Given that a typical mushroom starter kit requires two shoebox-sized 6-quart clear plastic totes, 144 square feet of total area would provide ample room for private cultivation.

**Alignment with Strategic Plan:**

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

**Staff Recommendation:** Staff seeks board direction to proceed with updates to the Land Development Code based.

**Concurrence:** N/A